

*United States Court of Appeals
for the Second Circuit*



APPENDIX

74-1289

UNITED STATES COURT OF APPEALS
for the
SECOND CIRCUIT

BAS

FRANK J. CRIMMINS,

Plaintiff-Appellant,

-against-

AMERICAN STOCK EXCHANGE, INC.,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

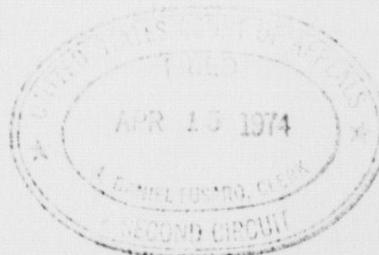
APPENDIX

SPEAR and HILL
Attorneys for Plaintiff-Appellant
One State Street Plaza
New York, New York 10004

OF COUNSEL:

Donald Stuart Bab
Seymour Swidler
William J. Burke

(4103)



COUNSEL PRESS, INC., 55 West 42nd Street, New York, N.Y. 10036 • PE 6-8460

PAGINATION AS IN ORIGINAL COPY

Reid v copies

4/15/74

Lord Day - Lord
args for appellee

TABLE OF CONTENTS

	<u>Page</u>
Extract of Relevant Docket Entries.....	1a
Exhibit C to Affidavit of Thomas W. Hill, Jr. dated September 7, 1973 ("Hill Affidavit"): pages 1-76 of American Stock Exchange Report of Investigation.....	5a
Exhibit E to Hill Affidavit: pages 1-2 and vi-xiii of Appendix 1 to Response of Walston & Co., Inc. to Report of Investigation..	81a
Exhibit B to Hill Affidavit: American Stock Exchange Charges dated November 24, 1971.....	91a
Exhibit I to Hill Affidavit: Interrogatories and Notice to Produce served by Frank J. Crimmins on American Stock Exchange May 9, 1973.....	99a
Exhibit F-1 to Hill Affidavit: Letter dated June 17, 1969 from Norman S. Poser to William D. Fleming.....	115a

Page

Exhibit F-2 to Hill Affidavit: Letter dated
June 30, 1969 from William D. Fleming to
Norman S. Poser.....118a

Exhibit F-3 to Hill Affidavit: Letter dated
August 20, 1969 from Norman S. Poser to
William D. Fleming.....123a

Exhibit G to Hill Affidavit: Letter dated
April 24, 1972 from Michael A. Greenspan
to Gordon L. Nash.....126a

Exhibit A to Affidavit of Frank J. Crimmins
dated September 7, 1973: Letter dated
August 27, 1973 from Thomas W. Rae, Jr.
to Frank J. Crimmins.....129a

Appendix C to Defendant's Memorandum of
Law in Opposition to Plaintiff's Motion
to Vacate the Decision of the Disciplinary
Panel and for a Preliminary Injunction
dated September 24, 1973: Application
dated February 11, 1965 for Registration
of Employee (Frank J. Crimmins) by Walston
& Co., Inc.....133a

Page

Affidavit of Burton L. Knapp dated September 24, 1973 ("Knapp Affidavit").....	148a
Exhibit B to Knapp Affidavit: Description of American Stock Exchange Disciplinary Panel hearing Charges against Frank J. Crimmins.....	167a
Memorandum and Order of Lasker, D.J., Deny- ing Motion for Summary Judgment by Frank J. Crimmins and Granting Motion for Summary Judgment by American Stock Ex- change, Inc.....	168a

Extract of Relevant Docket Entries in the United States
District Court for the Southern District of New York

Date	Proceedings
<u>1972</u>	
Jan. 21	Filed Complaint. Issued Summons.
<u>1973</u>	
Jul. 3	Filed plaintiff's order to show cause why disciplinary hearing should not be Preliminarily enjoined, returnable before Lasker J. on 7/3/73
Jul. 16	Filed stipulation and order extending temporary restraining order until plain- tiff's motion is returnable before the Court. LASKER, J.
Jul. 20	Filed memorandum of law in support of plaintiff's motion for preliminary in- junction.
Jul. 23	Filed affidavit of Burton L. Knapp, opposing plaintiff's temporary restrain- ing order.
Sept. 7	Filed plaintiff's notice of motion Re preliminarily enjoining and restraining enforcement of disciplinary panel decision, etc. Return date not noted.

Date	Proceedings
<u>1973</u>	
Sept. 7	Filed affidavit of Frank Crimmins Re: support of Sept. 7 motion for preliminary injunction.
Sept. 7	Filed memo of law in support of plaintiff's Sept. 7 motion for preliminary injunction.
Sept. 24	Filed affidavit of Burton Knapp in opposition to plaintiff's application for preliminary injunctive relief.
Sept. 24	Filed appendices to defendant's memo of law in opposition to plaintiff's motion to vacate decision of disciplinary panel and for preliminary injunction.
Oct. 1	Filed plaintiff's reply memorandum, and list of appendices.
Dec. 14	Filed memorandum OPINION #40,129-- Plaintiff's motion for summary judgment is denied. Defendant's motion for summary judgment is granted-It is so ordered--Lasker, J.-mailed notice.

Date	Proceedings
<u>1973</u>	
Dec. 18	Filed JUDGMENT; Ordered that defendant have summary judgment against plaintiff dismissing the complaint. CLERK
Dec. 27	Filed plaintiff's notice of motion for reargument. Returnable 1-15-74
Dec. 27	Filed memorandum of law by plaintiff in support of motion to reargue.
<u>1974</u>	
Jan. 8	Filed defendant's memorandum in opposition to motion for reargument.
Jan. 14	Filed plaintiff's reply memo of law in support of motion for reargument.
Jan. 17	Filed MEMORANDUM ENDORSEMENT on plaintiff's motion filed December 27, 1973. Plaintiff moves for reargument of our memorandum and order of December 14, 1973. Should plaintiff wish to press his claims further, the proper forum is the Court of Appeals. The motion is denied. So Ordered. LASKER, J.

Date

Proceedings

1974

Jan. 23

Filed plaintiff's notice of appeal
from order denying plaintiff's motion
for summary judgment and granting de-
fendant's cross-motion for summary
judgment, entered in this action of
the 14th day of December, 1973, m/n.

CONFIDENTIAL

A M E R I C A N S T O C K E X C H A N G E

Report of Investigation

March 1, 1971

Subject: Walston & Co., Inc.
Regular Member Organization

1. Introduction

This Report involves brokerage activities carried on by Walston & Co., Inc. ("Walston") in the common stock of Four Seasons Nursing Centers of America, Inc. ("FSN") while the firm and its officers held substantial investment positions in FSN stock, and while the firm maintained special relationships and associations with FSN as underwriters, finders and financial advisors.

Almost 11 million shares of common stock of FSN were traded on the Exchange in 1969, making it the fourth most active stock on the Exchange that year.* FSN stock had been admitted to trading on the Exchange on November 12, 1968. Six months prior thereto, in May 1968, FSN effected an initial public offering of 360,000 shares of common stock at \$11 per share. At the time of listing, the stock had risen in price to \$58. Without giving effect to a 2-for-1 split announced in January 1969, FSN stock attained

* Statistical summaries reflecting the price ranges of FSN stock and the extent of Walston's brokerage activities during the period covered by this Report are set forth in Appendices to the Report. In addition, Appendix III contains a chart reflecting both the price ranges of FSN stock and Walston's buying and selling activity in each week between December 1968 and April 1970. All prices of FSN stock shown on the chart have been adjusted to give effect to a 2-for-1 split of FSN stock, effective March 24, 1969.

on October 31, 1969, less than eighteen months after its debut as a public company, an all-time high of \$181.50 (\$90.75 after the split), or over 1500% of FSN's initial offering price of \$11 in May 1968.

On April 30, 1970, the Exchange halted trading in FSN stock, pending receipt of information to account for sharp price fluctuations occurring at the time. On May 13, 1970, the SEC ordered the first of a series of 10-day suspensions of trading in FSN stock on the Exchange which have been renewed continuously until the present time. On June 26, 1970, FSN filed in the Oklahoma Federal Court a Petition for Reorganization under the Bankruptcy Act. These proceedings are still pending.

2. Scope of Investigation and Persons Interviewed

This Report is based upon an examination of documentary materials and upon testimony given by numerous witnesses including certain officers and share-holders of Walston and other persons affiliated with Exchange member organizations.

Included in the documentary materials reviewed are: registration statements and listing applications of FSN, periodic reports filed by the company and minutes of FSN's board of directors meetings; daily, weekly and monthly clearing reports and activity reports compiled by the Exchange; and account transcripts and other records

1 / FSN stock traded on a when-issued basis between February 28, 1969 and March 21, 1969, the 2-for-1 split becoming effective on March 24, 1969. See Appendix I to this Report for a summary of the prices of FSN stock during the period covered by the Report and the chart comprising part of Appendix III reflecting Walston's market participation.

2 / See Appendix IV to this Report for the identity of the officers and share-holders of Walston and other persons connected with the events and transactions discussed herein.

of Walston reflecting transactions in FSN stock by certain individuals, including management officials of FSN and officers of Walston.

3. The Origins of Four Seasons

(a) Private Placement Arranged by Walston - September 1967

Following an introduction by Gordon H. McCollum, an officer and shareholder of Walston employed in the firm's Chicago office, Walston arranged in September 1967 a private placement of \$1 million for a new corporation to be formed to succeed to the business and assets of several corporations and partnerships engaged in the development of nursing centers in the State of Oklahoma. The predecessor entities had been organized commencing in 1963 by Messrs. Jack L. Clark, Amos D. Bouse, Jr., and Tom J. Gray, and they had operated at a loss since inception. Montgomery Company, a recently-formed venture capital partnership comprised of certain officers and shareholders of Walston, made its first investment on September 15, 1967, when it acquired a potential 16 2/3% interest in the new company by a \$500,000 participation in a \$1 million private placement of convertible preferred stock. To effectuate this financing the company referred to as "FSN" in this Report was incorporated in Delaware on September 11, 1967, under the name "Four Seasons Nursing Centers of America, Inc."

In recognition of their efforts in bringing about the 1967 private placement, Mr. McCollum and Walston were permitted to purchase 3% of the common stock in the new enterprise for \$45,000. Mr. McCollum was elected to the company's board of directors and Messrs. Clark, Bouse and Gray became the principal officers and holders of approximately 70% of FSN's then outstanding stock. A

close and continuing relationship (described in succeeding sections of this Report) began to develop subsequently between FSN and its management and Walston and its officers, including, in addition to Mr. McCollum, four other officers of the firm, Frank J. Crimmins, James Nissan, Robert E. Probert and Glenn R. Miller. (See Appendix IV).

(b) First Public Offering of Four Seasons Stock - May 9, 1968

Pursuant to a registration statement effective May 9, 1968, Walston, as managing underwriter, made an initial public offering on behalf of FSN of 360,000 shares of common stock at \$11 per share. 300,000 of these shares were sold for the account of the company which realized net proceeds of approximately \$3 million, and 60,000 shares were sold for the personal accounts of FSN's three principal officers, Messrs. Clark, Bouse and Gray, who realized approximately \$600,000. Prior to the offering 900,000 FSN shares were outstanding with a net book value of approximately \$1.30 per share. Upon completion of the offering 1,200,000 shares were outstanding with a net book value per share of approximately \$3.90.

Adjusted for a 3-for-1 stock split effected prior to FSN's initial public offering in May 1968, Walston, Mr. McCollum and Montgomery Company, the Walston investment partnership, held upon the completion thereof 12.5% of FSN's outstanding shares, consisting of 36,000 shares held by the firm and Mr. McCollum having an adjusted cost basis to them of \$1.25 per share, and 150,000 shares held by Montgomery Company having an adjusted cost basis of \$3.33 1/3 per share.

(c) Second Public Offering of Four Seasons Stock - November 26, 1968

FSN stock increased sharply in price in the over-the-counter market soon after its initial public offering on May 9, 1968, and when the stock was admitted to trading on the Exchange six months later on November 12, 1968, FSN opened at \$58 per share. On November 26, 1968, with Walston again serving as managing underwriter, FSN effected a second public offering of 597,800 shares at \$58.50. 100,000 of these shares were sold for the account of FSN, with the company realizing net proceeds of \$5,500,000. The remaining 497,800 shares were sold in the same offering for the account of 38 selling shareholders who realized net proceeds of \$27,379,000. The selling shareholders included Walston, Montgomery Company and Mr. McCollum, who in the aggregate realized \$5,115,000 from the sale of 93,000 FSN shares, representing one-half of their 12.5% interest in FSN acquired eight months previously for \$545,000.
3 /

Messrs. Clark, Bouse and Gray, FSN's three principal officers, also disposed of 374,000 of their own and their family's holdings of FSN stock in the November 26, 1968 offering, realizing a profit of approximately \$19 million in excess of their cost basis (\$.06 per share). According to the prospectus, Messrs. Clark, Bouse and Gray had committed themselves to use the entire proceeds received by them personally in the second offering to purchase securities of

3 / The Walston sales in the November 26, 1968 offering were as follows:

Montgomery Company, the Walston investment partnership (75,000 shares for \$4,125,000), Mr. McCollum (4,500 shares for \$247,500) and Walston (13,500 shares for \$742,500). As managing underwriter, Walston took down 215,300 of the 597,800 shares offered, approximately 36% of the issue, and received selling commissions of \$735,555 and a \$250,000 management fee.

Four Seasons Equity Corporation ("Four Seasons Equity"). Four Seasons Equity had been formed shortly before the November 26, 1968 offering for the stated purpose of providing a source of mortgage financing for new nursing centers to be built and managed by FSN. As discussed further in Section 9 below, Walston was instrumental in arranging the placement with institutions of equity and debt securities of Four Seasons Equity which enabled FSN's new affiliate to effect a public offering of its stock through Walston in late February 1969.

4. Walston Activity in Four Seasons Stock
Following November 26, 1968 Offering

As indicated in Appendix I, FSN stock continued to increase in price following the November 26, 1968 offering, closing at 67 on November 29, 1968, up 8 1/2 from the offering price of 58 1/2 just three days earlier. The upward trend continued into December 1968, as the stock sold at a low of 64 3/8 on December 21 and a high of 102 on December 26, 1968, closing at 99 1/4 on the latter date (approximately 70% higher than the November 26 offering price).
^{4 /}
Volume for the four weeks ended December 26, 1968 totaled 499,400 shares, a daily average of approximately 33,300 shares in 15 trading days (Wednesday closings of the market were in effect during December 1968).

At the conclusion of the November 26, 1968 offering, FSN had issued and outstanding a total of 1,600,000 shares with a net book value of approximately

4 / In Appendix I and the chart comprising part of Appendix III, all prices have been adjusted to give retroactive effect between December 1968 and March 21, 1969, to FSN's subsequent 2-for-1 stock split effective March 24, 1969.

\$6.55 per share. The 38 selling shareholders who sold 497,800 shares for over \$27 million as part of the offering (including Walston and its officers and Messrs. Clark, Bouse and Gray and their family trusts) were reported to have retained 640,950 shares, leaving a potential floating supply in late November 1968 of slightly under 1,000,000 shares.

Records of Walston indicate that of the approximately 215,000 FSN shares taken down for distribution to customers by the firm in connection with the November 26, 1968 offering of 597,800 shares, blocks of 1,000 or more shares were allocated to certain large customers. Subsequently, certain large institutional clients which Walston originally introduced to FSN assumed large positions in FSN stock through open-market purchases, with the result that by mid-1969, a significant portion of the floating supply of the stock was in the hands of institutional investors.

To cite some examples, Hedge Fund of America, a publicly owned mutual fund, was reported to have held at December 31, 1968 a total of 43,700 FSN shares acquired at a cost of \$2,616,636 (under \$60 per share) and having a 1968 year-end market value of \$4,020,400 (approximately \$99 per share), plus calls on another 1,000 FSN shares at 59 5/8 to 59 3/4. Some of the Fund's holdings were allocated to it at the November 26, 1968 offering price of 58 1/2. Glenn R. Miller, Executive Vice-President and a shareholder of Walston, was at the time also a director of Hedge Fund of America. Investors Diversified Services ("IDS"), a major institutional client of Walston serviced by Robert E. Probert, assumed prior to January 1969, an initial position of 75,000 FSN shares purchased through Walston and other brokers, and IDS later increased

its FSN holdings. Among other institutions solicited by Walston, and which during 1969 assumed significant positions in FSN stock, were the Manhattan Fund, Credit Lyonnaise Corp., and Foreign Commercial Bank of Zurich, Switzerland. In addition, the Manhattan Fund, IDS and certain other institutions held large blocks of so-called "lettered" stock of FSN and its subsidiaries acquired through private placements arranged by Walston and described below in this Report.

Exclusive of persons in management, the largest single holder of FSN stock was Gibraltar Growth Fund of Fort Lauderdale, Florida, which at July 14, 1969, held a position of 226,000 FSN shares accumulated periodically commencing in December 1968. As discussed in Section 7 below, Gibraltar Growth Fund was introduced to FSN by Walston in late 1968, and in 1969 the Fund and its President, David O. Ehlers, assisted FSN in obtaining institutional financing for certain FSN subsidiaries.

Records of Walston indicate that by January 1970, slightly over a year after FSN stock was admitted to trading on the Exchange, customers of Walston held approximately 500,000 FSN shares out of a floating supply then estimated at approximately 1,700,000 shares. Appendix III and the chart attached thereto reflect Walston's significant participation in the Exchange's total volume of activity in FSN stock in the period investigated. In the 17 months between December 1968 and April 1970, a total of 13,843,900 FSN shares were traded on the Exchange, of which Walston accounted for a total of 3,487,000 shares, equal to approximately 25% of total Exchange volume and two times the entire floating supply of FSN stock.

Over this entire period of substantial Walston activity in FSN stock, during which the market value of the FSN holdings of the firm and its officers appreciated to as high as approximately \$17 million, certain officers of Walston, while actively soliciting customer purchases of FSN stock, also maintained close and continuing business and social relationships with persons in FSN's management. In addition, the firm continued to serve FSN and its affiliated concerns in a variety of capacities as investment bankers, underwriters and financial advisers.

As discussed further in Section 12 below, Walston's extensive participation in the market in FSN stock continued unabated, despite the fact that beginning as early as January 1969 the Exchange began to call to the attention of Walston's principal officers the need for exercising restraint and for adopting adequate safeguards to assure that the firm's extensive relationships with FSN and the Walston officers' personal interest in the market price of FSN stock would not be permitted to conflict with the firm's duties owed to the investing public.

5. Certain Transactions Between
Officers of Walston and Persons
Associated with Four Seasons

(a) Accounts Maintained at Walston for
Four Seasons Officers and Associates

Walston new account forms dated September 23, 1968 and December 17, 1968, both approved by Mr. Crimmins, indicate that accounts were opened with the firm on those dates by Jack L. Clark and Amos D. Bouse, Jr., FSN's President and Executive Vice-President, respectively. Subsequently, Mr. Crimmins opened

accounts at Walston for Mr. Bouse's mother and father and for Karl Keller, an employee of FSN who served as Mr. Clark's personal pilot. In early 1969, Mr. Crimmins opened accounts at Walston for James P. Linn and Julian D. Helm, the principal officers of FSN's mortgage financing and franchising subsidiaries. (Certain transactions in these accounts are discussed in Section 10 below).

In addition to the foregoing accounts opened at Walston for FSN's officers and persons associated with them, four "numbered" accounts were opened in 1969 at Walston's Chicago office. The only transactions effected in these accounts were certain sales of FSN stock. Three of the numbered accounts (designated as Numbers "25", "26", and "27") were maintained for the benefit of Messrs. Clark, Bouse and Gray, respectively. The fourth numbered account (Number "28") was maintained for the benefit of Mr. McCollum, Walston's designee on the Board of Directors of FSN. In December 1969, Walston sold a total of 33,800 FSN shares for approximately \$2.5 million for the Clark, Bouse and Gray numbered accounts. In addition, 4,500 shares of FSN stock were sold for over \$300,000 for Mr. McCollum's numbered account under the circumstances described in Section 13(b) below. According to Glenn R. Miller, Walston's Executive Vice President:

"(T)he purpose of the numbered account was simply that the transactions could be consummated within the office, without a lot of conversation and gossip at the time they were being made."

As discussed in Section 5(b) below, investigation by the Exchange disclosed for the first time that in late 1969 Mr. Crimmins had effected in November 1968 and again in March 1969, purchases below prevailing market prices of blocks of unregistered FSN stock from Messrs. Clark, Bouse and

Gray, and that Mr. Crimmins still owed the sellers a substantial portion of the agreed purchase price of \$650,000.

(b) Personal Purchases by Frank J. Crimmins
of Blocks of Unregistered Stock from
Officers of Four Seasons

(i) First Purchase - November 1968

Copies of telephone tolls slips requested by the Exchange indicate that in the first five months of 1969, Mr. Crimmins had over 150 telephone calls to persons associated with FSN, an average of over one call per business day. At his first interview on November 25, 1969, Mr. Crimmins stated in response to inquiries concerning the extent of his personal holdings of FSN stock that he owned only 600 shares:

"Q Do you have a substantial portfolio of stocks of your own?

A I would say a fair portfolio, I guess.

Q Is Four Seasons among them?

A I own some Four Seasons, yes.

Q Can you tell me how many shares you own?

A 600 shares.

Q That is the total amount of stock you presently own?

A Yes. I am not talking about Montgomery Company.

Q I am talking about your own private ownership.

A That's right."

Later in his November 25, 1969 interview, there was exhibited to Mr. Crimmins an FSN shareholder list as of September 5, 1969, which indicated

that Mr. Crimmins held of record at that date not 600, but 31,200 shares of FSN stock. Upon further interrogation, Mr. Crimmins admitted that prior to the effective date of FSN's November 26, 1968 registration statement (see page 5 above), he had arranged to purchase for \$35 per share, substantially below the market, 10,000 unregistered FSN shares in equal amounts from Messrs. Clark, Bouse and Gray, FSN's three principal officers. Mr. Crimmins further testified on January 29, 1970 concerning this transaction as follows:

" . . . I believe it was the early part of November, as best my memory will serve me--the early part of November, 1968. . . . I had dinner with Mr. Clark. I told him of my strong convictions of the future of the industry, his company in particular, and I asked him if it would be possible for me to purchase from him and Messrs. Bouse and Gray, his partners, some shares of letter stock. He said that he would discuss it with Mr. Bouse and Mr. Gray and would let me know. . . . Subsequently, he did call me back and we agreed upon a price and I purchased ten thousand shares of letter stock from Messrs. Clark, Bouse and Gray."

At the time Mr. Crimmins stated he arranged to purchase the 10,000 FSN shares from the company's management officials, the bid prices for FSN stock in the over-the-counter market ranged from a low of 45 1/2 on October 1, to a high of 57 on November 12, 1968, when FSN stock first was traded on the Exchange. Subsequent to November 12, 1968, FSN sold at a low of 55 3/4 on November 13, and a high of 68 1/4 on November 29, 1969. As indicated in Section 3(c) above, Messrs. Clark, Bouse and Gray sold for their own accounts under FSN's November 26, 1968 registration statement an aggregate of 266,000 shares of FSN stock, and 53,500 shares for trusts for their children, at \$58.50 per share, \$23.50 per share more than the price stipulated prior to the offering for their sale of 10,000 shares to Mr. Crimmins.

In response to a request for further details of his purchases of 10,000 shares from Messrs. Clark, Bouse and Gray, Mr. Crimmins reiterated in a letter to the Exchange dated December 2, 1969 that he discussed the purchase with Messrs. Clark, Bouse and Gray in November 1968, and that:

"(A)t the time of these discussions, we arrived at a purchase price of \$35.00 per share. This agreement was finalized on December 23, 1968. The 10,000 shares of Four Seasons stock purchased by me subsequently split 2 for 1 around February, 1969."

According to Mr. Crimmins the purchase price of \$35 per share reflected a discount of 30% below the current market price of FSN stock in early November 1968 when the initial agreement was reached, in order to take account of the fact that the shares were unregistered and were sold subject to resale restrictions:

"I believe the stock was selling around fifty dollars. Thirty percent of fifty was fifteen dollars, so we mutually agreed upon a price of thirty-five dollars a share."

With respect to payment arrangements with Messrs. Clark, Bouse and Gray for the 10,000 FSN shares, Mr. Crimmins stated that he received physical delivery of the stock certificates pursuant to instructions to FSN's transfer agent referred to in a letter dated December 23, 1968 from FSN's company counsel which stated in part:

"Enclosed is a copy of our letter to the Transfer Agent in an effort to obtain share certificates of Four Seasons representing the 10,000 shares which Jack, Bud and Tom have agreed to sell you at \$35.00 per share. You recall, of course, that this is investment stock and will bear the restrictive legend. It is our understanding that you intend to pay one-half of the price of this stock about January 15, 1969, and the remainder six months later. If this is correct, we would appreciate your signing and returning one copy of this letter for our files."

During the week of December 23-27, 1968, when Mr. Crimmins concluded arrangements for delivery of the 10,000 shares, FSN stock had risen to as high as 102 and closed on December 27, 1968 at 97 1/2. On January 15, 1969, when Mr. Crimmins was obligated to pay one-half of the purchase price, FSN stock closed at 99 ⁵/₈.

On February 11, 1969, Mr. Crimmins sold in the market 4,200 other FSN shares owned by him at 121 7/8 per share for net proceeds of approximately \$508,000.

Despite the fact that he had realized approximately \$508,000 from his sale of 4,200 FSN shares in February 1969, Mr. Crimmins did not make any payment to the sellers until almost three months later on March 15, 1969, when he transmitted his personal checks aggregating \$175,000 to Messrs. Clark, Bouse and Gray in the amounts of \$59,500, \$57,750 and \$57,750, respectively. By March 15, 1969, FSN stock was selling on a when-issued basis in contemplation of a 2-for-1 stock split announced on January 8, 1969, effective March 24, 1969, and the 10,000 shares held by Mr. Crimmins had become 20,000 shares with an aggregate market value of approximately \$1,000,000, almost three times Mr. Crimmins' purchase price. Moreover, Mr. Crimmins did not make his second payment within six months after the first payment in accordance with the understanding set forth in FSN's counsel's letter of December 23, 1969. In fact he did not make his second payment of \$175,000 until January 15, 1970, over a year after the original purchase and shortly after the Exchange had begun to inquire into the transaction itself and the unusually liberal credit terms extended to Mr. Crimmins. Mr. Crimmins' obligation to Messrs.

⁵/ A Form 4 Report covering this transaction pursuant to Section 13(d) of the Securities Exchange Act (Changes in Beneficial Ownership) was not filed with the SEC and the Exchange until April 1969 and indicated that the 10,000 share sale from Messrs. Clark, Bouse and Gray to Mr. Crimmins occurred on January 15, 1969.

Clark, Bouse and Gray for the unpaid portion of the purchase price was not evidenced by a note, nor was any interest paid to the sellers.

(ii) Second Purchase - March 1969

Although Mr. Crimmins still owed Messrs. Clark, Bouse and Gray \$175,000 on account of Mr. Crimmins' November 1968 purchase of 10,000 FSN shares, in early March 1969 (following the January announcement of the 2-for-1 split), he arranged to purchase an additional 10,000 FSN shares for \$300,000 (\$30 per share) in equal proportions from Messrs. Clark, Bouse and Gray. FSN stock closed at 47 3/4 on March 14, 1969, having traded since March 3 at a high of 55 3/4 and a low of 46 1/8, making the agreed purchase price approximately 40% below the market.

On March 15, 1969, the same day he paid the first installment of \$175,000 on his November 1968 purchase of 10,000 FSN shares, Mr. Crimmins forwarded his check for \$55,000 (approximately 20% of the agreed purchase price of the second 10,000 share block) to Mr. Clark as a down payment. On April 7, 1969, Mr. Crimmins executed a note to the order of Messrs. Clark, Bouse and Gray providing for discharge of the balance of \$245,000 on the second 10,000 share purchase payable in two equal installments on April 7, 1970 and April 7, 1971. In contrast to the 1968 purchase, the certificates for the 1969 purchase were not delivered to Mr. Crimmins pending full payment of the purchase price. In a letter dated April 8, 1969 concerning the second transaction, counsel for FSN wrote to Mr. Crimmins:

"We have arbitrarily set the payment schedule and the interest rate. As we advised Jack, in the light of all the circumstances, this transaction should be structured in an arms length fashion. In this time of a prime rate of 7 1/2% we feel that a 6% interest factor is as low as we can justify as a businesslike transaction."

In response to questioning at his initial Exchange interview on November 25, 1969, concerning amounts then owed by him to Messrs. Clark, Bouse and Gray for the 10,000 FSN shares purchased in November 1968 (20,000 shares after the 2-for-1 split), and the 10,000 shares purchased in March 1969, Mr. Crimmins testified as follows:

"Q Is there any amount, either from that or anything else, owing between you, on the one hand and Messrs. Clark, Bouse or Gray, on the other?

A Let me hear that again.

Q Do you owe Mr. Clark any money or does he owe you any money?

A I owe Mr. Clark, Mr. Gray and Mr. Bouse some monies on my second commitment, which I am paying six percent interest on.

Q That is the second 10,000 shares?

A That's correct. I paid half of it off. I owe the other balance.

Q Then am I correct in supposing that none of the purchase price has been paid?

A The first 10,000 shares I paid for and I think half of the second 10,000.

Q Was that half of the second 10,000 paid at the time of the transaction?

A Yes, sir."

The clear purport of Mr. Crimmins' foregoing testimony given to the Exchange on November 25, 1969, was that his total indebtedness at that time to Messrs. Clark, Bouse and Gray was one-half of the purchase price of the second 10,000 shares, or \$150,000. Upon being recalled for further testimony on January 29, 1970 concerning his personal obligations to FSN's officers, Mr. Crimmins conceded that notwithstanding his earlier testimony he owed these individuals \$420,000 (exclusive of interest) - \$175,000 on the first purchase and \$245,000 on the second purchase. As indicated above, Mr. Crimmins did not effect payment of the second installment of \$175,000 on his first purchase until January 15, 1970, after the Exchange had inquired into these transactions.

Mr. Crimmins' initial failure to reveal at his Exchange interview the true extent of his FSN holdings and the misleading impression he thereby conveyed concerning the amount he actually owed to FSN's principal officers and shareholders, evidenced a lack of candor and forthrightness and made it necessary to recall Mr. Crimmins for further testimony. At no time did Mr. Crimmins come forth with a satisfactory explanation to the Exchange for the unusually liberal credit terms extended to him by Messrs. Clark, Bouse and Gray. The record further discloses that neither customers of Walston nor the investing public at large ever was informed of the fact that Mr. Crimmins, who actively solicited customer purchases of FSN while he was an officer of FSN's underwriter and financial adviser, also was a substantial individual shareholder in FSN by virtue of below-market purchases from FSN's principal officers. In this connection FSN's November 26, 1968 prospectus did not disclose that prior to the effective date of the offering, Mr. Crimmins had an

arrangement with Messrs. Clark, Bouse and Gray to purchase 10,000 FSN shares from them at prices substantially below the market. Moreover, Mr. Crimmins did not seek or obtain permission for his off-board purchases of FSN stock from the Exchange pursuant to Rule 5 of the Board of Governors. An FSN proxy statement dated September 16, 1968, issued in conjunction with the company's annual meeting held on October 7, 1969, also omitted to disclose either the first or second purchase of FSN stock by Mr. Crimmins
6 /
from FSN's principal officers.

As discussed in the succeeding Sections of this Report, subsequent to his first purchase in late 1968 of FSN stock from Messrs. Clark, Bouse and Gray, Mr. Crimmins, with the knowledge and consent of the principal officers of Walston, played an increasingly active part not only in the solicitation of customer purchase orders for FSN stock, but also in arranging financing for FSN and its affiliated companies.

6. Events Leading to Announcement of 2-for-1 Split of Four Seasons Stock on January 8, 1969

- (a) Positions in Four Seasons Stock Assumed by Institutions - December 1968 and Early January 1969.

As indicated in Section 3(d) above, the price of FSN stock had risen rapidly following the second offering of 597,800 shares on November 26, 1968 at 58 1/2.

6 / Comparison of the reported holdings of Messrs. Clark, Bouse and Gray in FSN's September 16, 1969 proxy statement with their holdings set forth in the prospectus of November 26, 1968, indicate that they had increased their aggregate record and beneficial holdings of FSN stock by 41,500 shares by August 29, 1969. (Mr. Clark by 21,633 shares, Mr. Bouse by 9,333 shares and Mr. Gray by 9,334 shares). Certain sales of FSN stock by Messrs. Clark, Bouse and Gray in 1969 were effected in accounts maintained for their benefit at Walston. (See Section 13(b) below).

By December 26, 1968, the stock appreciated over 50% in price, closing at 99 1/4, after reaching an intermediate high of 102 on that day.

Certain institutional customers of Messrs. Nissan and Probert purchased in this period of rapid appreciation in the price of FSN stock approximately 50,000 more shares than they sold. Some of the more substantial transactions in FSN stock effected between November 27 and December 26, 1968 for institutional and substantial individual customers of the firm serviced by Messrs. Nissan and Probert are tabulated on the following pages:

<u>PURCHASES OF FSN STOCK</u>				<u>SALES OF FSN STOCK</u>		
<u>Customer</u>	<u>Trade Dates</u> (1968)	<u>Prices</u>	<u>No. of Shares</u>	<u>Dates</u> (1968)	<u>Prices</u>	<u>No. of Shares</u>
Gibralter Growth Fund*	Nov. 29- Dec. 5	63 5/8- 77	15,000	Dec. 26- 27	100	5,000
Foreign Commercial Bank, Zurich, Switzerland	Nov. 27- Dec. 26	59 - 93 1/2	18,200	Dec. 5 - 23	79 1/8 98	10,000
Investors Stock Fund	Dec. 26.	97 1/4 101	15,000	---	---	---
Frank R. Stranahan	Dec. 9- 23	81- 98	9,600	Dec. 20- 23	92 98	5,900
Judson Sayre*	Nov. 27- Dec. 5	60 1/4- 77	7,000	---	---	---
Marathon Securities	Nov. 27- Dec. 2	60 1/2- 68	2,500	---	---	---

PURCHASES OF FSN STOCK

SALES OF FSN STOCK

<u>Customer</u>	<u>Trade Dates</u> (1968)	<u>Prices</u>	<u>No. of Shares</u>	<u>Dates</u> (1968)	<u>Prices</u>	<u>No. of Shares</u>
First Bank & Trust Co.	Dec. 6-9	77- 81 7/8	3,000	---	---	---
Hedge Fund* of America	Dec. 10, 12, 13	76 1/2 78 3/4	3,100	---	---	---
Alma Fund	Dec. 23	91 1/2- 94	800	---	---	---

* As indicated below, substantial additional purchases of FSN stock by these customers were made through other brokers or through Walston subsequent to December 26, 1969.

In contrast to the seven-week period between November 12, 1968 and December 19, 1968, when customers of Mr. Crimmins traded a total of only 7,316 shares, about evenly divided between purchases and sales, in the seven-week period between December 27, 1968 and February 14, 1969, Mr. Crimmins purchased for customers approximately 54,000 FSN shares and sold approximately 21,000 shares at prices ranging from approximately 80 to 97. Mr. Crimmins conceded in his testimony that he actively solicited customer purchase orders during this period.

Shortly after the opening of trading on January 8, 1969, the Exchange temporarily halted trading in FSN stock pending receipt of information to account for activity in the stock and wide price fluctuations since the week ended December 27,

7 /
1968 when FSN closed at 97 1/2. Trading was resumed on January 8, 1969, after FSN issued a release stating that the board of directors was proposing a 2-for-1 split of the outstanding stock. (See Section 5(b) below).

On January 8, and again on January 15, 1969, informal discussions were had between representatives of the Exchange and members of Walston's legal department concerning the possible impropriety of soliciting customer purchase orders of FSN stock, in view of Walston's relationships with FSN. According to two Walston internal memoranda dated January 8 and January 16, 1969, the firm's legal department requested Messrs. Crimmins and Nissan to cooperate in not soliciting customer purchase orders for FSN stock. These instructions apparently were subsequently either rescinded or disregarded since, as discussed below, Messrs. Crimmins and Nissan were permitted to continue their uncontrolled solicitation of customer transactions in FSN stock.

(b) Market Activity by Walston at the Time of
Announcement on January 8, 1969 of 2-for-1
Split of Four Seasons Stock

As indicated above, on January 8, 1969, FSN announced publicly a proposed 2-for-1 split of the company's then outstanding 1,600,000 shares. In contrast to the sharp price rise in FSN stock occurring in the November 27 - December 26, 1968 period

7 / Activity in FSN stock on January 6 and 7, 1969 was as follows:

	<u>Open</u>	<u>High</u>	<u>Low</u>	<u>Last</u>	<u>Range between High and Low</u>	<u>Volume</u>
Jan. 6	87	90 1/4	82 3/4	85	7 1/2	31,700
Jan. 7	85	85 1/2	79	83 7/8	6 1/2	49,100

(from 58 1/2 to 99 1/4), the price of the stock declined substantially over the next seven trade dates from 99 1/4 on December 26, 1968, to a low of 79 on January 7, 1969, the day preceding the stock split announcement. However, on the 23 trading days following the stock split announcement (January 9 to February 11, 1969), the price of FSN stock increased over 50% from its low of 79 on January 7, 1969, reaching a then all-time high of 125 on February 11, 1969, closing at 115 1/4 on February 14, 1969. As discussed below, Walston was particularly active on the buy side on the seven trade dates preceding the stock-split announcement.

Mr. Crimmins stated in his testimony that the FSN stock split was the subject of telephone conversations he had with Jack L. Clark, FSN's President, in early December 1968, prior to its public announcement. According to Mr. Crimmins, in one of these conversations Mr. Clark requested him to canvass investor opinion as to the advisability of the split, and to report back to Mr. Clark. Mr. Crimmins further stated that within a "very few days" he "reported to Mr. Clark that each of the contacts made thought that the stock should be split to provide a more orderly market."

Records of Walston indicate that the firm purchased for customers on the seven trade dates preceding the stock-split announcement (December 27, 1968 to January 7, 1969) a total of 53,080 shares (24%) and sold 29,564 (13%) of the Exchange's reported volume of 221,300 shares. However, customer transactions in FSN effected at Walston by Messrs. Crimmins, Nissan and Probert in this period immediately preceding the stock-split announcement were predominantly on the buy side, with their purchases alone aggregating 37,800 shares, approximately

17% of total Exchange volume. On January 7, 1969, Mr. Nissan purchased 200 shares for his own account at 84 5/8 and 100 shares for his wife's account at 81 3/4. Four institutional accounts serviced by Messrs. Nissan and Probert purchased 23,000 FSN shares and sold none in the seven days immediately preceding the 2-for-1 stock split announcement on January 8, 1969, as follows:

<u>Customer</u>	<u>Dates of Purchase</u>	<u>Price Ranges</u>	<u>FSN Shares</u>
Investors Stock Fund	Dec. 30, 1968	84 1/2 - 90	15,000
Gibraltar Growth Fund	Dec. 30, 1968- Jan. 6, 1969	88 - 90 3/4	5,000
Foreign Commercial Bank, Zurich	Dec. 31, 1968	99 1/2 - 92	2,000
IDS Progressive Fund	Jan. 3, 1969	85 - 85 3/8	1,000

In contrast to the sharp decline in the price of FSN stock between December 26, 1968 and January 7, 1969, when certain of Walston's institutional accounts were accumulating FSN stock, in the 29 trading days between January 8 and February 14, 1969, the stock increased again, closing at 115 1/4 on the latter date, almost 100% of the 58 1/2 offering price in late November 1968. Including the week ended January 10, 1969, to and including the week ended February 14, 1969, Walston alone purchased during these 29 trading days 169,200 shares (20%) and sold 148,000 shares (18%) out of a total of 841,500 shares traded on the Exchange, accounting for approximately 10,000 shares per day out of an overall average volume on the Exchange of about 29,000 shares per day.

As discussed in Sections 6 and 7 below, Gibraltar Growth Fund and certain other institutional clients of Walston continued to accumulate additional blocks of FSN stock following a meeting held on January 13, 1969 in Fort Lauderdale, Florida at the offices of Gibraltar Growth Fund attended by Mr. Crimmins, and at which Jack L. Clark, FSN's President, furnished certain information concerning FSN's future nursing center construction program.

7. Meeting at Gibraltar Growth Fund's Offices in Fort Lauderdale, Florida on January 13, 1969

On January 13, 1969, Mr. Crimmins accompanied Jack L. Clark to a meeting at the offices of Gibraltar Growth Fund in Fort Lauderdale, Florida. The host was David O. Ehlers, then a registered representative associated with Riter & Co. and President ^{8 /} of Gibraltar Growth Fund. Also in attendance were members of Gibraltar's staff, and an individual whose substantial account was serviced by Mr. Nissan, Judson S. Sayre of Miami, Florida, who had introduced Jack L. Clark to Mr. Ehlers at the Superbowl football game in Miami the previous day. At the time of the meeting Mr. Sayre held a 7,000 position in FSN stock purchased through Walston commencing with FSN's November 26, 1968 offering.

Testifying before Exchange representatives on November 18, 1969, Mr. Ehlers stated that during one of his visits to New York in the Fall of 1968, Mr. Sayre a wealthy retired businessman residing in Florida, had introduced him to Mr. Nissan,

8 / Appendix IV describes the affiliations between Riter & Co., Mr. Ehlers and Gibraltar Growth Fund. The Fund was sponsored by Riter & Co. and in 1968 was reported as having the second highest percentage of appreciation in net asset value of all publicly held mutual funds (72.7%).

and that approximately one month later on November 29, 1968, Gibraltar Growth Fund made its initial investment in FSN stock after Mr. Sayre had cited the stock to Mr. Ehlers as an "interesting" situation. Records produced by Gibraltar Growth Fund indicate that between November 29 and December 6, 1968, the Fund made its initial purchases of 15,000 FSN shares through Walston and 5,000 shares through Riter & Co. at prices ranging from 63 5/8 to 65. As indicated below by July 1969, Gibraltar Growth Fund held 226,000 FSN shares of a market value at that time exceeding \$13 million.

In recounting the events leading to the Fort Lauderdale meeting with Messrs. Ehlers and Jack L. Clark on January 13, 1969, Mr. Crimmins testified that a few days earlier he had accompanied Mr. Probert to Minneapolis on a visit to Investors Diversified Services ("IDS"), a substantial institutional account of Walston serviced by Mr. Probert and which at that time had established a position of approximately 75,000 FSN shares. Mr. Probert indicated that IDS was seeking further contacts and more information concerning FSN, and that he had requested Mr. Crimmins to go with him because he "had more knowledge of FSN."

Messrs. Crimmins and Probert, accompanied by two representatives of IDS, proceeded from Minneapolis to FSN's Oklahoma City headquarters on January 10, 1969, where they met Messrs. Clark and Bouse and other FSN officers and employees and they spent a day touring the company's facilities. On the following day, January 11, Mr. Probert returned to New York. Mr. Crimmins, however, flew with Messrs. Clark and Bouse, and FSN's counsel to Miami to attend the Superbowl game on January 12. Mr. Sayre introduced Mr. Clark to Mr. Ehlers during half-time and arrangements were made for the Fort Lauderdale meeting the next day.

Mr. Ehlers testified that following a luncheon discussion on January 13, 1969 concerning FSN, he prepared a two-page memorandum of the matters covered by Mr. Clark. Mr. Ehlers further stated that on the following day, January 14, 1969, he began a program of buying additional FSN stock for Gibraltar Growth Fund.

Mr. Ehler's memorandum of January 13, 1969, stated in part:

"Four Seasons of America intends to construct additional beds as shown below:

<u>Date</u>	<u>Installed Beds At End of Period</u>	<u>Constructed Beds of Additional Capacity During Period</u>
1-1-69	2,400	
6-30-69	5,400	3,000
6-30-70	13,400	8,000
6-30-71	20-22,000	6,600-8,600

Construction profits are estimated at \$1500 pre-tax per bed, operating profits are estimated at \$700 per bed pre-tax per year, while gross volume amounts to \$5,000 per bed per year.

Under the foregoing circumstances, we estimate earnings per share for the periods shown as follows:

	<u>6 Months Ending</u>	<u>Year Ending</u>	<u>Year Ending</u>
Constructed Beds			
During Period	3,000	8,000	6,600 - 8,600
Pre-Tax Profit			
(\$1500 per Bed)	\$4.5 mil.	\$12.0 mil.	\$9.9 - \$12.8 mil.
7% Operating Fee (1)	---	\$2.1 mil.	\$4.9 mil.
Pre-Tax Profits	\$4.5 mil.	\$14.1 mil.	\$14.8 - \$17.7 mil.
Taxes (at 35%)	<u>\$1.6 mil.</u>	<u>\$4.9 mil.</u>	<u>\$5.2 - \$6.2 mil.</u>
Net Income After Taxes	\$2.9 mil.	\$9.2 mil.	\$9.6 mil. - \$11.5 mil.
Earnings per Share (2)	\$1.81	\$5.10	\$4.80 - \$5.80

It seems likely that the attainment of fiscal 1970 results would result in further expansion of construction and development activity resulting in sharply higher fiscal 1971 results."

In his Exchange testimony, Mr. Ehlers confirmed that the specific estimates of FSN bed construction set forth in his contemporaneous memorandum emanated from his discussions with Jack L. Clark on January 13, 1969, and that he did not know at the time whether FSN had announced any of this information publicly. According to Mr. Ehlers, however, he prepared on his own the estimates appearing in the memorandum of FSN's anticipated per share earnings from the new construction based on FSN's historical rates of earnings.

As indicated in the succeeding Section of this Report, the market price of FSN stock rose substantially in the month following the January 13, 1969 meeting in Fort Lauderdale, as Gibraltar Growth Fund and certain institutional customers solicited by Walston accumulated significant positions in FSN stock.

8. Walston Activity in Four Seasons Stock Following
Fort Lauderdale Meeting on January 13, 1969

FSN stock closed at 85 1/4 on January 13, 1969, the day of the Fort Lauderdale meeting between Jack L. Clark and Mr. Ehlers, on volume of 21,300 shares, trading that day between a high of 85 1/2 and a low of 82 3/4. On the following day, January 14, 1969, the stock opened at 88 and reached a high of 101, closing at 97 1/8 on volume of 74,100 shares, up 11 7/8 from FSN's closing price of January 13, 1969. On 22 trading days between January 15 and February 14, 1969, FSN reached a high of 125 on February 11 and a low of 95 on January 20, closing on February 14 at 115 3/4, an increase of 33 1/8 from FSN's closing price on Friday, January 10, 1969.

Exchange clearing reports summarized in Appendix II reflect the substantial market activity by Walston during the five weeks beginning Monday, January 13,

1969, and ending Friday, February 14, 1969. In the 24 trading days spanning this period, Walston's purchases and sales totalled 273,500 FSN shares out of a total of 678,200 shares traded on the Exchange, approximately 40% of total volume.

Records of Walston, Riter & Co. and Gibraltar Growth Fund reviewed by the Exchange indicate that commencing on January 14, 1969, the day following the Fort Lauderdale meeting between Mr. Ehlers and Jack L. Clark, Gibraltar Growth Fund which then had a position of 20,000 FSN shares, purchased an additional 25,000 shares costing approximately \$1.8 million, 15,000 shares through Walston on January 14 and 10,000 shares through Riter & Co. on January 14 and 15, 1969.

In the ensuing days and weeks Gibraltar Growth Fund continued to accumulate FSN stock through Walston and Riter & Co., acquiring 35,600 shares costing \$4.7 million in the month of February 1969, prior to the effective date of the 2-for-1 stock split on March 24, 1969. By February 28, 1969, Gibraltar Growth Fund held 80,600 pre-split FSN shares acquired since late November 1968 at a total cost of approximately \$8 million. At February 28, 1969, Gibraltar Growth Fund's holdings alone of FSN stock amounted to approximately 5% of the then outstanding shares and close to 8% of the outstanding stock not held by management and Walston.

9 / At Jack L. Clark's invitation, in late January 1969, Messrs. Ehlers, Crimmins and Gordon H. McCollum flew to Palm Springs, California to play golf. Amos D. Bouse, Jr., and James P. Linn, an officer of FSN's mortgage and franchising subsidiaries, also were present.

As indicated in the tabulation below, at the same time Gibraltar Growth Fund was acquiring substantial blocks of FSN stock, other institutional customers of Walston serviced by Messrs. Crimmins, Nissan and Probert, also were active on the buy side, including Manhattan Fund which acquired 48,000 shares between trade dates of February 7 and March 3, 1969:

<u>Date</u> <u>(1969)</u>	<u>Customer</u>	<u>Number of FSN Shares Purchased and Price Ranges</u>
January 14	Credit Lyonnaisse Corp.	4,000 (92 3/8 - 99)
22	Sefi & Co.	6,500 (105 - 110)
February 7	Manhattan Fund	7,300 (120 1/4 - 123)
12	" " "	4,000 (118 1/8 - 122 1/4)
14	" " "	10,000 (116 3/8 - 117)
20	" " "	10,000 (102 5/8)
25	" " "	6,700 (100 1/4 - 109)
March 3	" " "	10,000 (100 1/2 - 109)

On trade date, February 11, 1969, when FSN attained its all-time high up to that time of 125, Mr. Crimmins sold for his personal account through Walston 4,200 FSN shares at 121 7/8, realizing net sale proceeds of over \$500,000. Testifying concerning this transaction, Mr. Crimmins stated:

"The reason I sold that stock was to use the proceeds to pay for the unregistered securities I bought, the long-term securities from Messrs. Clark, Bouse and Gray"

As indicated in Section 4 above, despite the fact that he realized over \$500,000 from his sale on February 11, 1969, Mr. Crimmins only paid \$230,000 on March 15, 1969, of the \$650,000 he then owed Jack Clark and his associates on account of Mr. Crimmins' two private purchases of FSN stock.

9. Walston Offering of Shares of Four Seasons
Equity Corporation - February 28, 1969

By means of a registration statement effective February 28, 1969, Walston as managing underwriter participated to the extent of approximately 250,000 shares in a public offering of 545,000 shares of Four Seasons Equity Corporation ("Four Seasons Equity"). Four Seasons Equity had been organized in late 1968 for the purpose of providing mortgage funds for the financing of nursing centers to be constructed by FSN. The shares of Four Seasons Equity were offered by the Walston underwriting group at \$11 per share and they tripled in price immediately in the over-the-counter market.

An integral part of the financing of Four Seasons Equity was the obtaining of advance commitments from institutional investors for the purchase of approximately \$20 million principal amount of 7 1/2% First Mortgage Notes of a subsidiary of Four Seasons Equity. According to Glenn R. Miller, Walston's Executive Vice-President, the financing was originated by the firm's corporate finance department in Chicago headed by Mr. Miller. Mr. Miller further stated that although it was not customary for Walston's registered representatives and other personnel engaged primarily in selling activities to assist in private placements with institutions, Mr. Crimmins was permitted by the firm to provide Jack L. Clark with introductions to Marine Midland Bank and Hemisphere Fund, and Edward Hiscox, another sales

officer of Walston, placed \$1 million of notes with Foster McGaw. Marine Midland Bank eventually acquired \$1.2 million of Four Seasons Equity 7 1/2% Mortgage Notes in December 1968. Mr. Crimmins testified that in lieu of cash compensation for his services he received warrants to purchase common stock of Four Seasons Equity at \$14 per share exerciseable after January 27, 1970. In all, Walston obtained commitments from 14 institutions for \$19,500,000 principal amount of 7 1/2% Mortgage Notes of a Four Seasons Equity subsidiary. In consideration of the commitments the institutions received warrants to purchase 65,000 shares of Four Seasons Equity common stock at \$14 per share and 130,000 shares at \$15 per share.

As indicated in Section 6(b) above, in January 1969, following informal discussions with the Exchange, Walston's legal department issued instructions to Messrs. Crimmins and Nissan to discontinue their solicitation of customer purchase orders of FSN stock, after the Exchange had suggested the possible impropriety of such solicitation in view of Walston's underwriting and financial advisory relationships to FSN, coupled with the substantial position in FSN stock held by officers of the firm. In late February 1969, however, Walston's compliance department informally advised the Exchange that the firm wished to permit Messrs. Crimmins and Nissan to resume the solicitation of FSN purchase orders. Walston's indication that it intended to rescind the January 1969 instructions carried with it an implication that the activities of Messrs. Crimmins and Nissan were being closely supervised by the firm.

There was no disclosure by Walston to the Exchange, however, at the time Walston expressed a desire in late February 1969 to permit the resumption of solicitation by Messrs. Crimmins and Nissan, of the extent of their past

soliciting activities, or of the close relationships which they had established with FSN and its officers, including the fact that Mr. Crimmins had already arranged a private purchase for his own account of 10,000 FSN shares from FSN's three principal officers.

10. Walston Activity in Four Seasons Stock in March 1969,
Prior to Public Announcement on April 7, 1969 of
Four Seasons Franchising Program

In 15 trading days from March 3 to March 21, 1969, FSN traded on a when-issued basis (prior to the effective date of the 2-for-1 stock split on March 24) between a low of 46 3/4 and a high of 55 1/2, closing on Friday, March 21, 1969 at 54 on relatively modest volume for the 15 days of approximately 100,000 shares, an average of about 6,600 shares per day. However, during the single week of March 24 - 28, 1969 (when the 2-for-1 stock split became effective), FSN stock rose sharply attaining a high of 64 3/4 on March 27, closing on March 28 at 62. 328,500 FSN shares were traded on the Exchange between March 24 - 28, of which 255,000 shares, comprising approximately 60% of volume for all of March, were traded on only three days, March 25, 26 and 27, 1969. In the single week ended March 28, 1969, Walston's combined purchases and sales aggregated 183,000 shares, equal to 56% of total Exchange volume that week of 328,500 shares.

Walston's extensive market participation in FSN stock during the last week in March 1969, preceded by about ten days FSN's first public announcement made on April 7, 1969, of the company's plans to franchise the Four Seasons name for use by local groups planning to construct nursing centers. FSN stock rose to 66 on April 7, 1969, following the franchise program announcement, and by the close on Friday, April 11, the stock was 69, after attaining a high of 72 1/2 on

Friday, April 11, 1969. A total of 391,000 FSN shares were traded on the Exchange during
10/
the week of April 7 to 11, 1969, following the announcement. Walston, which had been
predominantly on the buy side in January, February and March 1969, sold twice as many
FSN shares in April 1970, as it bought (90,100 shares purchased against 170,300 shares
sold) during this period of rapid increase in the price of FSN stock. (See chart annexed
to Appendix III). Certain of these sales were for the accounts of persons associated
with FSN who had purchased shares just prior to the franchise program announcement at
substantially lower prices.

5,000 FSN shares costing approximately \$300,000 were purchased by Mr.
Crimmins between March 21 and April 3, 1969, for accounts maintained at Walston for
James P. Linn and Julian D. Helm, officers of FSN subsidiaries, under the circum-
stances discussed below. Mr. Nissan purchased approximately 14,600 FSN shares
for customers at prices between 49 1/4 and 63 3/4 in the period from March 24 to
April 4, 1969. In addition, Mr. Nissan purchased 700 FSN shares on March 25, 1969
for his personal account and that of his wife. On April 8 to 11, 1969, following the
FSN franchise program announcement on April 7, a number of customers of Messrs.
Crimmins and Nissan (including the two officers of FSN subsidiaries mentioned above),
realized short term trading profits by selling at prices between 67 5/8 and 71 1/2 FSN

10/ The public announcement of the Four Seasons Franchise program was
carried on the tape on April 7, 1969 at 11:28 a.m., following a halt in
trading on the Exchange at 10:27 a.m. and stated in part:

"Four Seasons Nursing Centers of America has completed
plans for making Four Seasons Nursing Centers available to
local doctors and businessmen on a franchise basis."

shares purchased prior to the franchise program announcement in late March and in the first week of April 1969, at substantially lower prices.

Mr. Crimmins opened an account at Walston on January 3, 1969, for James P. Linn, who subsequently became President of Four Seasons Equity. Although a Walston new account form for Julian D. Helm who subsequently became Vice-President of Four Seasons Franchise Centers, Inc. is dated April 16, 1969, as noted above 2,000 FSN shares were purchased for Mr. Helm's account on April 1 and 3, 1969. In all, 5,000 FSN shares were purchased for the Linn account between February 26 and April 3, 1969, of which 3,000 shares were purchased between March 21 and April 3, 1969 at approximately \$58 per share. On April 24, 1969, 1,000 FSN shares were sold for Mr. Linn's account at \$75 per share. Mr. Helm's account indicates that he purchased 2,000 shares at 60 and 64 1/8 through Walston on April 1 and 3, 1969, and that he sold 1,000 shares at 75 on April 24, 1969.

In connection with the purchase of 3,000 FSN shares by James P. Linn commencing on March 21, 1969, Mr. Crimmins stated that in calls he placed to Mr. Linn in Spearman, Texas on March 21, 25 and 28, 1969, he recommended the purchase of FSN stock to Mr. Linn because he "thought the stock was going to enjoy a pretty substantial appreciation in price and he ought to buy some stock."

On March 14, 1969 Gibraltar Growth Fund purchased an additional 10,000 FSN shares increasing its position to 181,200 shares. On March 25 and 26, 1969 the Fund manager, David O. Ehlers purchased for his personal account at Riter & Co. 2,000 FSN shares. Mr. Ehlers indicated to the Exchange that these purchases were prompted by information regarding the FSN franchising program, referring to it in this manner:

".... a \$13 million financing program, which was going to have a substantial and immediate fantastic impact on the market price"

Mr. Ehlers' anticipation of the market impact of this information proved correct and he began selling FSN shares on April 7, 1969 12 minutes after the announcement on the tape of this news, selling a total of 1,100 shares on April 7 and 8, 1969 for a profit of approximately \$10,000.

Mr. Crimmins was afforded an opportunity at his Exchange interview to account for the noticeable buying activity in FSN stock on behalf of customers of Walston in the two weeks preceding the first public announcement on April 7, 1969 of the Four Seasons franchise program. Mr. Crimmins' testimony and documents in the record indicate that Mr. Crimmins and other sales personnel of Walston were aware of the essential facts prior to the public announcement of this corporate development, and that, nevertheless, they were permitted without any restriction to solicit customer transactions, including trading transactions in FSN stock by persons in FSN's management.

As discussed below, Mr. Crimmins was in close contact with Jack L. Clark in New York City for most of the week of March 31 - April 4, 1969, when Mr. Clark, with Mr. Ehlers' assistance, solicited institutional participations of \$13 million in the FSN franchise program. Form 4 Reports filed with the Exchange by Messrs. Clark, Bouse and Gray indicate that their sale of a 10,000-share block of FSN stock at \$30 per share to Mr. Crimmins occurred on April 4, 1969. As indicated in Section 4 above, Mr. Crimmins had arranged this purchase in March 1969. On April 7, 1969, the day of the FSN franchise program announcement when Mr. Crimmins executed his note to Messrs. Clark, Bouse and Gray calling for

payment of the \$245,000 balance of the purchase price in two installments in 1970 and 1971, FSN stock closed at \$66, over double the price at which Mr. Crimmins purchased his second block of 10,000 shares from FSN's principal officers.

11. Meetings in New York City on March 31 - April 4, 1969 in Connection with \$13 Million Private Placement for Four Seasons Franchise Centers, Inc.

Testifying before the Exchange on November 18, 1969, Mr. Ehlers stated that in discussions with Jack L. Clark in mid-February 1969, Mr. Clark had brought up the subject of organizing an FSN franchising subsidiary:

"He told me they were considering a new venture: Four Seasons Franchise Centers. They didn't know if they wanted to get involved in franchising with doctors in small towns.

"He called me about a week later. We talked some more, and we talked a little bit about this thing. They thought they might do this thing, go into a new venture, and he asked me if we would have any interest in a private placement or what-not.

"I said, 'I don't think we would in the Gibraltar Growth Fund because we have a lot of stock.' I said we might have some clients at Riter & Company or could introduce Jack to some clients directly that might have an interest. Thereafter I wrote that memorandum."

As indicated in a letter dated February 23, 1970 written by Jack L. Clark to the Exchange, Mr. Linn and Mr. Clark had initiated discussions as early as January 1970, concerning the organization of a Four Seasons franchising subsidiary. Mr. Clark's letter stated in part:

"Mr. James P. Linn and I first discussed our company's plans to establish a franchising company in late January 1969. At about the same time Mr. Linn and I had our first discussions concerning his becoming associated with Four Seasons as President of the franchising subsidiary."

Mr. Ehlers produced at his Exchange interview on November 20, 1969, a six-page memorandum dated March 27, 1969, which Mr. Ehlers stated he had prepared for the purpose of presenting financial and other information to prospective participants in a private placement to obtain funds for the FSN franchising program. The Ehlers memorandum contained financial and other information concerning a new FSN franchising subsidiary to be 80% owned by FSN and 20% owned by Four Seasons Equity, and it included projections of anticipated operations and earnings predicated upon the raising of \$13 million of initial equity capital.

In recounting his efforts to obtain requisite financing of the Four Seasons franchising subsidiary, Mr. Ehlers stated that he spent four days, March 31 to April 3, 1969, in New York City. There, he and Jack L. Clark jointly solicited the interest of prospective institutional investors in a private placement consisting of the "package" designed by Mr. Ehlers of FSN and Four Seasons Equity securities. According to Mr. Ehlers, during his New York City visit, he saw Mr. Nissan at Walston's offices and he saw Mr. Crimmins "two or three times." In describing the favorable reaction of institutions which were approached in the FSN franchising program, Mr. Ehlers stated:

".... The total we started out to raise was something like \$10 million. Then it got raised to 12 and 13. Then they ultimately ended up selling 15, and that all occurred the first week in April. It ultimately became fifty percent larger than we had anticipated. I think we started out to raise eleven million dollars for some reason."

According to a list produced by Mr. Ehlers of the participants in the FSN franchise subsidiary financing, a group consisting of ten institutions and two private individuals made commitments to invest a total of \$15 million for the purchase of investment units consisting of a total of 190,000 shares of FSN for \$12 million

(approximately \$63 per share), and 75,000 shares of Four Seasons Equity for \$3 million (\$40 per share).

Mr. Ehlers stated that his arrangements with FSN called for a 1% finder's fee, but since he was responsible for only \$7 to \$8 million of the \$15 million in subscriptions obtained during the week of March 31 - April 4, 1969, he and Riter & Co. agreed to a \$100,000 fee to be paid by FSN, of which Mr. Ehlers' share was \$75,000. According to Mr. Ehlers, he and Riter & Co. subsequently elected to take their compensation in the form of warrants to purchase stock of Four Seasons Franchise Centers, Inc. at \$13 per share.

Mr. Ehlers testified that some \$8 million to \$9 million of the commitments made for the FSN franchising subsidiary were obtained by Jack L. Clark through his own contacts. However, the list of subscribers produced by Mr. Ehlers indicates that three of the largest participants were IDS (\$1,850,000), Tsai Management Co., an affiliate of the Manhattan Fund (\$2,250,000), and Summit Management and Research Corp. (\$1,000,400). As indicated above, IDS and Manhattan Fund originally were introduced to Jack L. Clark and FSN by Walston in connection with the pre-offering financing of Four Seasons Equity notes. (See Section 9 above). Summit Research and Management was the investment adviser to Hedge Fund of America, Inc. of which Glenn R. Miller was a director.

Despite the fact that two of the largest subscribers to the FSN franchising subsidiary financing were Walston clients introduced to FSN by Walston, and one of the subscribers was a mutual fund of which Mr. Miller was a director, Messrs. Crimmins and Miller sought to convey an impression in their Exchange testimony that Messrs. Clark and Ehlers acted on their own and that Walston lacked any

specific knowledge, prior to April 7, 1969, of the FSN franchise program or of the participation of certain of Walston's major institutional clients in the financing of the program. As discussed below, Mr. Crimmins' inconsistent testimony and other undisputed facts of record, including the fact that Mr. Crimmins spent a good part of the week of March 31 to April 4, 1969 with Jack L. Clark and his associates, indicate that in this instance, as in the case of Mr. Crimmins' explanation of his personal purchases of FSN stock from Messrs. Clark, Bouse and Gray, Mr. Crimmins was neither candid nor forthright. Moreover, Mr. Crimmins failed to offer a credible explanation for the heavy activity by Walston, including Mr. Crimmins' customers, in the period of March 25 to April 3, 1969, preceding the franchise program announcement on April 7, 1969.

At his initial Exchange interview on November 25, 1969, Mr. Crimmins indicated that he first learned that FSN was considering a franchising program two months prior to the public announcement in February 1969, when he attended a seminar in New York City, also attended by Jack L. Clark, dealing with the nursing home industry and sponsored by Equity Research Associates, Inc. :

"Q When did you learn that the company was considering setting up a franchising subsidiary?

A You are talking of the time?

Q Yes.

A I remember Bob Probert, who is a partner of mine who works in institutional sales, had set up a dinner meeting. Mr. Kowalski was there representing Credit Lyonnaise and Mr. Sheldon Greenberg with IDS. Mr. Clark, Mr. Probert, myself, and that was it, five of us. Going back in time, if my memory serves me, I think it might have been the evening of the day of that Equity Research seminar."

Mr. Probert confirmed that the dinner meeting referred to by Mr. Crimmins occurred on the evening of February 4, 1969, at Lutece Restaurant in New York City following the seminar, and that in addition to Jack L. Clark and the IDS and Credit Lyonnaise representatives, the dinner was attended by two other individuals associated with FSN, Karl Keller and William Meer.

Also, at Mr. Crimmins' November 25, 1969 interview, in response to the following question:

"Q Do you recall if you did introduce Mr. Clark to any of your customers other than the ones we have already mentioned? Let me mention some specific customers and I will ask you if you did introduce Mr. Clark. One is Credit Lyonnaise Corporation?",

Mr. Crimmins testified initially as follows:

"A Definitely."

* * * * *

"I think Steve was at a dinner meeting one night. I think Jack Clark made a presentation to Steve Kowalski (of Credit Lyonnaise) and Sheldon Greenberg of IDS on the proposed sale of letter stock of Four Seasons Nursing Centers and Four Seasons Equity which he wanted to sell shares of both to create the franchise company, and institutionally-oriented accounts such as IDS and Credit Lyonnaise had certainly the financial wherewithal to make such an investment."

Following submission to Mr. Crimmins of the transcript of his November 25, 1969 interview for signature, Mr. Crimmins revised his foregoing testimony materially to read as follows:

"I think Steve was at a dinner meeting one night. I think Jack proposed an idea before hand to Steve Kowalski and Sheldon Greenberg of IDS on the creation of a package of 50 million in long term mortgage monies, and institutionally-oriented accounts such as IDS and Credit Lyonnaise had certainly the financial wherewithal to make such an investment."

In a letter to the Exchange dated December 2, 1969, Mr. Crimmins replied as follows to the Exchange's request that he furnish the source from which he first learned of FSN proposed franchising activities:

".... it is likely that the subject of franchising may have come up during the Equity Research Associates seminar held in New York in February 1969. However, I have no recollection of discussing specifically the subject of franchising with anyone during the Equity seminar and to the best of my recollection nothing of a specific nature was known by me concerning Four Seasons' definitive franchising concepts until the official announcement of the company in April."

As noted above, Hedge Fund of America and two of Walston's major institutional clients which previously had been introduced to FSN by the firm (IDS and Manhattan Fund), became substantial participants in the FSN franchising program. Gibraltar Growth Fund, which was instrumental in arranging the private placement for FSN's franchising subsidiary, was introduced to FSN through Walston. Records reflecting Mr. Nissan's telephone toll calls indicate that between March 4 and March 27, 1969, he had placed twenty calls to Fort Lauderdale, Florida, the Gibraltar Fund's main office, including 3 calls on March 25 when Mr. Nissan purchased 700 FSN shares for his own account, and six telephone calls on March 26, 1969. Prior to April 7, 1969, Mr. Crimmins had established an unusually close personal relationship with FSN's management as evidenced by, among other things, Mr. Crimmins' purchases of over \$600,000 worth of FSN stock from the Company's principal officers on extremely liberal credit terms. During the two weeks prior to April 7, 1969, Walston purchased and sold almost 50% of the 479,000 shares traded on the Exchange. These facts, considered in light of the facts set forth below indicating that Mr. Crimmins had continuous contacts of both a business and social nature with Jack L. Clark in New York City during the week of March 31 - April 4, 1969, make it most unlikely that the officers of Walston were not generally aware in advance of the public announcement on April 7, 1969 of the material facts

concerning the FSN franchising program.

In the late afternoon of March 31, 1969, Mr. Ehlers and Mr. Crimmins attended a gathering for cocktails at Jack L. Clark's suite at the Regency Hotel, which also was attended by James P. Linn and other persons associated with FSN, and by Francis J. Santangelo, the Exchange specialist in FSN stock. On the next evening, April 1, 1969, Mr. Crimmins joined a group including Messrs. Clark, Linn and Santangelo for dinner at Mike Manuche's Restaurant and later they attended a basketball game at Madison Square Garden. As noted above, James P. Linn, as well as Julian D. Helm, two of the principal officers of FSN's new franchising subsidiary, purchased through Walston a total of 4,000 FSN shares on April 1 and April 3, 1969.

Mr. Crimmins has denied in his statements and representations to the Exchange that the Linn and Helm purchases of FSN stock, as well as the purchases by his other customers in the March 25 - April 3, 1969 period prior to the public announcement of the FSN franchising program on April 7, 1969, were prompted by material information not yet disclosed to the investing public. However, in light of Mr. Crimmins' continuous contacts and substantial personal dealings with FSN's top management officials and his efforts to obtain financing for FSN ventures, it is clear that Mr. Crimmins was well aware of the imminent undertaking by FSN of this franchising program when he was soliciting purchases by customers.

12. Inadequacy of Walston's Procedures to Control
Solicitation of FSN Transactions and Misuse
of Inside Information

(a) Admonitions Given by the Exchange
to William D. Fleming in 1969

Prior to requesting Walston's responsible officers to appear for interviews in November 1969, written warnings were sent by the Exchange to William D. Fleming, Walston's President, beginning in June 1969, concerning the potential danger arising out of Walston's special relationships with FSN of permitting the uncontrolled solicitation of customer orders for FSN stock. Mr. Fleming's failure to furnish the Exchange by late October 1969 with adequate assurances that Walston had adopted and was enforcing effective safeguards to control solicitation of customer orders for FSN stock, made it necessary for the Exchange initially to call Mr. Crimmins for interviews commencing on November 20, 1969, and later to call Messrs. Nissan, Probert, Miller and McCollum, as well as David O. Ehlers and other connected with Riter & Co. and the Gibraltar Growth Fund. The record of investigation discloses that despite the Exchange's efforts to alert Mr. Fleming to Walston's obligations as a member organization, throughout the balance of 1969 and in the first four months of 1970 until trading in FSN stock was halted on April 30, 1970, Messrs. Crimmins, Nissan and others were allowed to persist in the very practices about which the Exchange earlier had registered its serious concern. Details of the correspondence and meetings between Mr. Fleming and the Exchange in 1969 are discussed below. The events which prompted the Exchange to send its warning to Mr. Fleming are illustrated in Appendix II and the chart attached to Appendix III.

As noted in Section 10 above, Walston was particularly active in FSN stock during the months of March and April 1969 both before and after the April 7, 1969 announcement of FSN's plans to engage in franchising operations. On April 28, 1969

trading in FSN stock was halted briefly by the Exchange and resumed after FSN had issued a release stating that \$13 million had been raised for Four Seasons Franchise Centers, Inc. through the private placement described in Section 10 above. On May 19, 1968, FSN announced that it was seeking to negotiate \$90 million in long-term financing from three institutional investors for the new franchising operations.

Walston continued to account for a significant portion of Exchange activity in the five weeks ended May 29, 1969, buying and selling a total of 256,800 shares, 31% of the 825,500 FSN shares traded on the Exchange during that period. During the single week ended May 2, 1969, Walston traded 111,500 FSN shares, 42% of total volume. Customers of Mr. Nissan purchased approximately 27,700 FSN shares during the week of April 28 - May 2, 1969, accounting for over 40% of Walston's total purchase activity. FSN stock traded between a high of 82 1/2 and a low of 71 3/8 in May 1969, closing at 76 5/8 on May 29, up 3 1/4 from its closing price on April 30, 1969.

As noted in Section 6(b) above, on January 8, 1969, Walston's compliance department, following informal discussions at the time with the Exchange staff, instructed Mr. Crimmins to cease the solicitation of customer purchase orders for FSN stock. Instructions of similar purport were given by the firm to Mr. Nissan on January 16, 1969. However, in the latter part of February 1969, Walston indicated to the Exchange that it was rescinding these restrictions on solicitation.

Noting Walston's extensive market participation in FSN stock in April and May 1969, despite the warnings given in early January 1969 concerning the solicitation of customer purchase orders, on June 17, 1969, the Exchange wrote to Mr. Fleming to apprise the firm of the Exchange's concern about the possible use of inside information

in the continued solicitation by Messrs. Crimmins and Nissan of customer purchase orders for FSN stock, and further requesting Walston to furnish the Exchange with a written report by July 1, 1969: (1) indicating whether any violations of the federal securities laws or Exchange regulations had occurred; and (2) describing existing standards and internal controls of the firm designed to control solicitation of customer transactions for securities of companies with which the firm had special relationships.

In a written reply to the Exchange dated June 30, 1969, Mr. Fleming stated that Walston had conducted a "thorough investigation" and had found that there had been no violations of law or the Exchange rules; that the firm's trading activities in FSN stock were in accordance with its established policies; and that none of the firm's personnel "has been privy to or acted on the basis of any so-called inside information."

Further correspondence and meetings between Walston supervisory personnel and the Exchange staff were had in late August and early September 1969, after the Exchange on August 20, 1969, had again written to Mr. Fleming to clarify its prior letter to the firm dated June 20, 1969, and to point out that the firm's existing supervisory standards and controls still posed a danger of misuse of inside information in view of the relationships between Walston and FSN. In particular, the Exchange called to Mr. Fleming's attention the firm's failure to adopt appropriate safeguards to insulate sales personnel from confidential information concerning future developments obtained by the firm's corporate finance and underwriting departments, and Walston's failure to subject customer transactions in FSN securities to adequate control and supervision.

Following a meeting held on September 8, 1969 between Mr. Fleming and other firm personnel and members of the Exchange staff, Walston agreed to revise its previous written procedures, and the firm issued a compliance bulletin to all personnel dated October 15, 1969 which, among other things, directed the firm's order room to report to the Compliance Director all purchase or sell orders of 1,000 shares or more of securities of companies with which the firm had special relationships affording access to inside information, and cautioned sales personnel not to use inside information in the event it was obtained.

(b) Continued Solicitation of FSN Transactions
By Walston Subsequent to June 1969

Despite the discussions had between Walston and the Exchange from June to October 1969 concerning control of solicitation of customer purchase orders, the Exchange's subsequent interviews of witnesses and review of trading and other Walston records indicate that in July, August and September 1969, Messrs, Nissan and Crimmins continued actively to solicit customer transactions in FSN stock. In July, Mr. Nissan purchased 41,000 FSN shares, including blocks of 11,000 and 10,000 for two institutions. In August, Mr. Nissan's customers purchased 48,700 shares, of which 34,000 shares were accounted for by six institutions. In September, Mr. Nissan's customers purchased 30,200 shares, of which 16,200 shares were purchased by two institutions. Mr. Crimmins purchased 8,400 FSN shares for customers in July and 27,100 shares in August 1969.

Except during a general market decline in late July 1969, when FSN stock declined to 49 1/2, the price of the stock remained relatively stable for most of the period between June 2 and September 30, 1969, closing on the latter date at 68,

down 5 3/8 from the closing price in April, the month in which FSN stock had its sharpest price rise. On October 1, 1969, FSN announced that it had completed plans to raise \$15 million of new capital through an offering in Europe on behalf of an overseas subsidiary; and on October 7, FSN announced that it had increased its authorized shares from 4 million to 8 million shares and planned to expand its activities into hospital and child day care centers.

In the month of October 1969, the price of FSN stock again rose sharply on an average daily volume of approximately 53,000 shares in the 15 trading days between October 13 and October 31, 1969, as the stock reached its all-time high of 90 3/4 on October 31, 1969, closing that day at 86 1/4, up 18 1/4, an increase of approximately 27% for the month. Records of Walston, however, indicate that between October 6 and October 24, 1969, the firm was predominantly on the sell side, disposing of a total of 183,200 FSN shares for customer accounts, amounting to almost 25% of the total Exchange volume in these three weeks, while purchasing only 36,400 shares, about 5% of volume. Total Exchange volume in FSN stock in the month of October 1969 reached a then all-time high of 1,401,500 shares.

On October 15, 1969, Walston had 108,700 FSN shares on loan to other brokers and had called back 47,700 shares to cover the firm's short position in the stock. The Exchange's October 15, 1969 short position report indicated that the short position in FSN stock had reached 246,595 shares. Inasmuch as the then estimated floating supply of the stock was approximately 1,716,000 shares, of which 762,000 shares reportedly were held by institutions, the short position approached 40% of the estimated remaining supply of approximately 954,000 shares and served to accentuate fluctuations in price as short sellers sought to

cover. As a result, on October 30, 1969, the Exchange issued Information Circular #180-69 advising members and member organizations that prior to making short sales they must be in a position to cover by delivery of shares within the normal five-day period.

On October 31, 1969, FSN announced that for its first quarter ended September 30, 1969, the company had earned 42¢ per share, as compared to 9¢ per share in the first quarter of its prior fiscal year.

As discussed further in the succeeding Section of this Report, in late April 1970, FSN publicly announced its inability to meet previously projected levels of operating revenues and income. This and other information coming to the attention of the Exchange prompted a halt in trading in FSN stock on the Exchange on April 30, 1970. Subsequent interviews conducted in the month of May 1970 of Messrs. Miller and McCollum and review of records in Walston's Chicago office disclosed that commencing in early December 1969, Messrs. Clark, Bouse and Gray, FSN's principal officers, and Mr. McCollum while still a director of FSN, had sold through numbered and other accounts at Walston substantial blocks of FSN stock for their personal accounts.

13. Events Preceding Halt in Trading in Four Seasons Stock on April 30, 1970

- (a) Announcement by Four Seasons of Third Quarter Loss and Other Material Adverse Developments

As discussed below, Mr. McCollum was interviewed for the first time by Exchange representatives on May 7, 1970, approximately one week after the Exchange

halted trading in FSN stock on April 30, 1970, following an announcement by Jack L. Clark that FSN expected to show a net loss in an indeterminate amount for its third quarter ended March 31, 1970. Previously, on October 31, 1969 FSN reported earnings of 42¢ per share for its first quarter ended September 30, 1969 and 90¢ per share for the six months ended December 31, 1969.

Glenn R. Miller, Walston's Executive Vice-President and head of the firm's underwriting department, was interviewed by the Exchange on May 22, 1970. On January 9, 1970 Mr. Miller had issued an inter-office memorandum to all of Walston's branch offices commenting on the recent price decline in FSN stock and indicating that the company would earn approximately \$2.00 per share in fiscal 1970 and \$4.00 to \$5.00 per share in fiscal 1971.
10/

As discussed below, among other matters, the testimony of Messrs. McCollum and Miller given in May 1970, disclosed for the first time that shortly after the Exchange called in Walston's officers for interviews in late November 1969, Mr. McCollum, together with Messrs. Clark, Bouse and Gray, FSN's three principal officers and shareholders, had sold simultaneously in December 1969 through numbered accounts maintained for them at Walston a total of 39,900 FSN shares for approximately

10/ Mr. Miller's wire stated in part:

"The principal reason for the recent price decline appears to be a statement by the President, Jack L. Clark, that his estimate for earnings for the fiscal year ended June 30, 1970 was closer to \$2.00 than the \$2.50 previously estimated by a number of analysts. The \$2.00 estimate is approximately 2 1/2 times the \$.82 per share reported for fiscal '69, so it is difficult for us to be worried about the projected level of earnings for the current year. Moreover, earnings for the following year are expected to show further substantial gains, possibly reaching a level as high as \$4.00 - \$5.00 per share."

\$2.9 million. Mr. McCollum's testimony further revealed that while he still was a director of FSN he sold on April 27, 1970, three days prior to the first public announcement of materially adverse developments in the affairs of FSN, 1,000 shares, leaving himself with a balance of 1,000 shares out of 18,000 shares he acquired at the time of Walston's original financing of FSN stock in September 1967.

(b) Insider Sales of FSN Prior to Trading Halt on April 30, 1970

In the two months between October 31, 1969 (when FSN attained its all-time high of 90 3/4) and December 31, 1969, FSN stock continued to decline, reaching 73 1/8 at the end of November and 65 7/8 on December 31, 1969. In 1970, the price of FSN stock continued its decline, reaching approximately 50 at the end of January and 42 by April 15, 1970. Between April 20, 1970 and April 30, 1970, the day when trading was halted by the Exchange, FSN stock declined still further with the last sale occurring on April 29, 1970 at 32 3/4.

On November 6, 1969, slightly over two years after they acquired their FSN shares, Mr. McCollum joined in a request to the SEC made by Messrs. Clark, Bouse and Gray for a no-action letter permitting each of them to dispose of a portion of his personal holdings of FSN stock within the limits of SEC Rule 154. The joint request was granted by letter dated November 25, 1969.

11 / 9,000 pre-split shares of which 4,500 were sold prior to the 2-for-1 split in conjunction with FSN's November 28, 1968 secondary.

As indicated by Mr. Miller's testimony (See Section 5(b) above), numbered accounts were opened at Walston's Chicago office for Messrs. Clark, Bouse, Gray and McCollum and designated accounts "25", "26", "27" and "28", respectively, to permit transactions for FSN's principal officers "without a lot of conversation and gossip", and the numbered accounts were used solely for sales of FSN stock for these individuals. In the month of December 1969, commencing approximately one week after Mr. Crimmins had been called in for his initial Exchange interview on November 25, 1969, a total of 39,900 FSN shares were sold for approximately \$2.9 million in the four numbered accounts, of which 38,400 shares were disposed of in 12/ a single day, December 2, 1969. These insider sales alone accounted for approximately 35% of total Exchange volume in FSN stock of 151,500 shares during the week ended December 5, 1969.

Mr. McCollum subsequently sold through his numbered "Account 28" another 1,000 FSN shares at 41 3/4 on February 26, 1970, and 1,000 shares at 32 1/2 on April 27, 1970. Mr. McCollum's April 27, 1970 sale was entered at 10:57 a.m.

12/ Walston's sales of FSN stock for the four numbered accounts were as follows:

	<u>No. of Shares</u>	<u>Prices</u>	<u>Trade Dates</u>
Account 25 (Clark)	15,900	73-73 5/8	December 2, 1969
Account 26 (Bouse)	9,000	73-73 3/8	December 2, 1969
Account 27 (Gray)	9,000	73-73 1/2	December 2, 1969
Account 28 (McCollum)	4,500	73-73 1/2	December 2, 1969
	1,500	80-80 1/2	December 22, 1970
	1,000	41 3/4	February 26, 1970
	1,000	32 1/2	April 27, 1970
Total	41,900		

and executed at 11:30 a.m., prior to a board of directors meeting held later that day, the minutes of which were signed by Mr. McCollum and which indicated that instead of previously forecasted higher earnings, FSN was going to sustain a loss in its third quarter ended March 31, 1970. The April 27, 1970 directors meeting minutes further reflected the fact that Jack L. Clark had requested and received on April 10, 1970 the resignation of Amos D. Bouse, Jr. as FSN's construction manager. Moreover, the May 1970 testimony of Messrs. McCollum and Glenn R. Miller further revealed that in early 1970, relations between Jack L. Clark and Walston had become strained to the point that on March 10, 1970, Mr. Miller had suggested to Mr. Clark, under the circumstances described in Section 13(c) below, that Walston could no longer act as FSN's investment banker and that the company should obtain another firm to act in that capacity.

Testifying before Exchange representatives on May 7, 1970, Mr. McCollum responded as follows in answer to a question whether the "shading down" of FSN's 1970 earnings estimates in Mr. Miller's inter-office wire of January 9, 1970 (See Footnote 10 above) may have prompted his and the Clark, Bouse and Gray sales of FSN stock because it indicated a corporate situation becoming less attractive:

"That certainly may have been a factor in their subjective judgments and decisions."

Records reflecting Mr. McCollum's transactions in disposing of 8,000 FSN shares between December 2, 1969 and April 27, 1970, indicate that in his sale of 1,500 shares for \$119,287.52 on December 22, 1969, he oversold "Account 28" by 1,500 shares. According to the records, the December 22, 1969 sale subsequently was cancelled and replaced by a sale as of January 2, 1970 of 1,500 shares from

Mr. McCollum's regular account at the same price.

Records of customer accounts at Walston indicate that in addition to the above-mentioned sale on April 27, 1970 by Mr. McCollum of 1,000 FSN shares in his numbered account, Mr. Crimmins sold on April 7, 1970 for his personal account 600 FSN shares at 46. On April 23 and 24, 1970, a few days before material adverse developments in the affairs of FSN were disclosed to the Exchange, Mr. Crimmins effected sales in an account maintained at Walston's Sperry Rand Building office in New York standing in the name of Amos D. Bouse, Jr., of 3,000 FSN shares at 33 and 33 1/8. As discussed below, it was not disclosed until April 29, 1970, that Jack L. Clark had requested and received on April 10, 1970, Mr. Bouse's resignation as manager of FSN's construction division⁷.

(c) Appearance of FSN Officials at the Exchange - April 29, 1970

On April 29, 1970, Jack L. Clark, accompanied by John C. Andrews, Assistant Secretary and Director, and John W. Mee, Vice-President and General Counsel of FSN, attended a meeting at the Exchange called for the purpose of discussing an appropriate public announcement following the Exchange's being apprised of FSN's anticipated third quarter loss for fiscal 1970. In addition, discussions took place concerning the facts and circumstances surrounding action taken by FSN's board of directors at a meeting held in October 1969 approving substantial personal loans to company officers, and action taken at a board meeting on March 26, 1970, approving substantial loans to FSN from the State of Ohio and a finder's fee based on a percentage of such loans. The Exchange ascertained for the first time on April 27, 1970, that contrary to the company's

listing agreement, personal loans aggregating \$235,000 had been made by the company to three officers: John W. Mee - \$75,000; James P. Linn - \$135,000; and Julian P. Helm - \$25,000.

With respect to the loan from the State of Ohio, it was determined that the State had approved a two-year 9 1/2% loan for \$7 million, of which \$4 million was taken down immediately by FSN with an understanding that FSN would be eligible to receive up to \$15 million in additional loans from Ohio for a fifteen to twenty year period. According to Jack L. Clark, the loans were arranged through a West Coast company named Financial Data Relations, Inc. and its President, Ronald Howard, pursuant to an understanding by which FSN would reloan to Mr. Howard 20% of the first \$4 million advanced by Ohio and 15% of all loans thereafter with interest at one per cent over the interest payable by FSN to the State.

It further was disclosed at the April 29, 1970 meeting at the Exchange that on April 10, 1970, Jack L. Clark had requested the resignation of Amos D. Bouse, Jr. as manager of FSN's construction division primarily because of asserted irregularities in control and accounting procedures which failed to reflect the full extent by which labor and material costs on certain of FSN's construction projects were exceeding estimates. In addition, it was indicated that FSN's accountants had raised questions concerning the company's methods of accounting for profits on construction projects and on the sale of nursing center franchises. According to John Mee, one of the FSN officers who attended the meeting at the Exchange, final determination by the accountants was likely to result in lower than anticipated earnings by FSN for the entire year ended June 30, 1970.

(d) Extent of Knowledge by Messrs. McCollum and Miller
of Corporate Developments in Four Seasons

At his interview on May 7, 1970, Mr. McCollum denied that his sales of substantially all of his remaining holdings of FSN stock between December 2, 1969 and April 27, 1970, were prompted by inside information of an adverse nature concerning FSN. However, further interrogation of Mr. McCollum and Mr. Miller elicited their testimony quoted at pages 56 to 59 below that they had been aware for some time prior to April 27, 1970 of certain questionable FSN transactions, and a strained relationship between Jack L. Clark and Walston which had developed to the point where Glenn R. Miller had advised Mr. Clark on March 10, 1970 to seek another investment banker for FSN.

Mr. McCollum's and Mr. Miller's testimony further indicate that Mr. McCollum regularly attended FSN board of directors meetings and that he acted as a conduit of all information concerning FSN which he invariably conveyed either to Mr. Miller, or to Donald Latin, a Walston officer employed in Walston's corporate finance department in Chicago. In addition, Mr. McCollum was responsible for Mr. Crimmins' introduction to Jack L. Clark in June 1968 because, according to Mr. McCollum, he thought Mr. Crimmins was "one of Walston's top salesmen" and he thought Messrs. Crimmins and Clark would get along well together.

During his Exchange interview, Mr. McCollum at first professed unawareness of personal loans made by FSN to certain of its officers, as well as FSN's loans from the State of Ohio:

"Q To the best of your knowledge, has Four Seasons Nursing Centers of America, Inc. ever loaned any money to any of its officers or directors?

A Not to my knowledge.

Q To the best of your knowledge, has Four Seasons Nursing Centers of America ever acted as surety or guarantor for any loan which was made by any of the company's officers or directors?

A Not to my knowledge. The only exception might have been in some of their temporary financing. Sometimes you have mortgage commitments, but you have temporary loans from banks or something like that that they might guarantee under that circumstance.

Q I am talking about loans that Four Seasons would guarantee for the benefit of an officer or director.

A No. I don't know anything about that at all."

There was then exhibited to Mr. McCollum a copy of minutes of two meetings of the board of directors of FSN held on October 7, 1969 and February 17, 1970, both signed by Mr. McCollum and reflecting his attendance at the meetings:

"Q Does that refresh your recollection as to whether or not Four Seasons has ever made any loans to any of its officers and directors?

A I had forgotten about this. I remember it now.

* * * * *

Q And weren't you in attendance at that meeting?

A Yes.

* * * * *

Q Did you make any inquiry into the propriety of the loan?

A I did not.

Q Did you interpose any objection to the loan?

A Yes."

With respect to FSN's arrangements to obtain loans from the State of Ohio, Mr. McCollum initially testified as follows:

"Q Do you recall the discussion with Mr. Clark concerning the obtaining by Four Seasons of a loan from the State of Ohio?

A No. I only knew that he was attempting to borrow some money from the State of Ohio. I did not know how much, how or anything more about it.

* * * * *

Q Did he (Jack L. Clark) relate any of the details?

A No.

* * * * *

Q Was the subject of any loans from the State of Ohio ever discussed at any meeting of directors?

A No."

There was then exhibited to Mr. McCollum during his interrogation, a copy of a consent dated March 10, 1970, signed by Mr. McCollum and FSN's four other directors, together with minutes of a "Special Meeting of the Executive Committee" of FSN's board of directors dated March 26, 1970, which ratified action taken at a prior meeting of the Executive Committee held on March 3, 1970 authorizing the borrowing by FSN of up to \$7 million from the State of Ohio, and the relending of 20% thereof to the finder, Financial Data Relations, Inc. Mr. McCollum stated that he had never seen the documents before, despite the fact that his signature appeared thereon:

"A It is my signature. I could have signed it. It is a separate sheet and they asked me to sign it.

* * * * *

"Q When you learned of the fact that Four Seasons was at least contemplating borrowing from the State of Ohio, did you discuss it with anyone else associated with Walston & Co.?

A I think I mentioned it to Bill Geary, and I probably did to Glenn Miller, namely, that some of these sources of income that Jack Clark was confident could be obtained went through negotiations going on with the State of Ohio. I did not know any of the particulars of it."

In his Exchange testimony given on May 22, 1970, Glenn R. Miller denied that he had any discussions with Mr. McCollum concerning FSN's borrowings from the State of Ohio:

"Q Do you recall whether Mr. McCollum, after a directors' meeting, advised you of the existence of a loan from the State of Ohio to Four Seasons Nursing Centers of America?

A Are you referring to the last directors' meeting?

Q I am talking about a directors' meeting that occurred prior to April 27, 1970.

A No, I recall no discussion with Gordon on this at all."

Upon further interrogation, however, Mr. Miller admitted that the matter of the Ohio loans was discussed between him and Jack L. Clark at the time when he had advised Mr. Clark that Walston wished to stop serving as FSN's investment banker. This occurred on March 10, 1970, the same day Mr. McCollum consented in writing to the Ohio and Financial Data Relations, Inc. transactions. Testifying concerning his conversations with Jack L. Clark at the time, Mr. Miller stated that on March 10, 1970 he stated to Mr. McCollum:

"We have reached the point where we just have to tell Jack that if he is unwilling to provide us with the kind of information an investment banker should have, we should pull out as investment banker."

According to Mr. Miller, he then telephoned Jack L. Clark:

"I called Jack and I said, 'I am very distressed. Gordon is in here and he has told me about your conversation last night and, frankly, this is very disturbing because you know Gordon is the easiest guy in the organization to get along with. You have told me you won't work with so and so, you won't work with Don Latin. He is one of our men in the Underwriting Department. You won't work with Tom Moran. These are men who are tough investigators, interrogators. You won't work with them. Gordon is my last guy and, if you are not going to work with Gordon, you can't work with anybody, and we just better back away, and you'd better find yourself another investment banker.'"

"Q When was this, specifically?

A This was on March 10th.

Q This occurred on March 10th, your conversation with Gordon and your conversation with Clark?

A Yes."

In describing the role of Mr. McCollum as an FSN director, Mr. Miller made it clear that Mr. McCollum was under his direction and control, and that in preparing inter-office wires and memoranda concerning FSN, all information concerning FSN came to him and other members of Walston's underwriting department directly from contacts with Jack L. Clark:

"Q Do you recall ever discussing a Four Seasons situation with Mr. McCollum prior to the publication of any wire announcement?

A No. I think I should make this clear. I think that the information that I got, and I think in most cases other men in the Underwriting Department got, came directly from contacts with Jack Clark or other people of Four Seasons, rather than indirectly through Gordon."

Mr. McCollum sought to convey an impression in his testimony that he signed minutes of FSN directors' meeting with no real understanding of the nature of the transactions he had approved. Although admitting that Jack L. Clark, rather than Mr. McCollum was his primary source of information concerning FSN, Mr. Miller also denied any knowledge prior to public release of the information concerning the FSN loans to officers, the transactions with the State of Ohio and arrangements with the finder, and the discharge of Amos D. Bouse, Jr.

It would appear, however, in the light of Mr. Miller's testimony concerning his conversation with Jack L. Clark on March 10, 1969, the very day when Mr. McCollum consented to the action of FSN's board of directors approving the Ohio loan transaction that the activities of Mr. Clark and his associates were causing, and had caused for some time, concern to Mr. Miller and other Walston officers. Under these circumstances, serious questions exist as to the propriety of permitting sales to be effected through Walston of substantial blocks of FSN stock by Mr. McCollum and the principal officers of Walston prior to public disclosure of information of a materially adverse nature concerning FSN known to Messrs. Miller and McCollum.

SUMMARY AND CONCLUSIONS

Substantial Positions in Four Seasons Stock Held by Officers of Walston

In September 1967, Walston, and Montgomery Company, an investment partnership comprised of officers of the firm, obtained a significant stock ownership position in FSN, a relatively new enterprise for which a major portion of the capital was supplied by Walston and institutional and other clients of the firm.

By late November 1968, a little more than a year after Walston had furnished financing to FSN, the firm as managing underwriter effected two registered offerings of FSN common stock through which almost \$35 million was raised from the public. The company derived net proceeds of approximately \$8.5 million from these two offerings. Selling shareholders, however, realized approximately \$26.5 million from concurrent sales of part of their personal FSN holdings, including officers of Walston who realized in late November 1968 approximately \$5.1 million by selling one-half of their holdings acquired 14 months earlier for \$545,000.

Giving effect to a 2-for-1 split effective March 24, 1969 of FSN's outstanding shares, by April 1969, Walston and its officers continued to retain over 180,000 FSN shares. As the price of FSN stock rose sharply during 1969, the value of the Walston holdings became substantial, attaining a market value as high as approximately \$17 million in October 1969, when FSN stock reached its all-time high of 90 3/4. In addition to the holdings of the firm and Montgomery Company, Mr. Crimmins held 30,000 unregistered FSN shares acquired from FSN's principal officers and having a market value approaching \$3 million in the last half of 1969. Mr. McCollum, who personally realized proceeds of approximately \$250,000 by the sale of one-half

of his FSN holdings in the November 1968 secondary offering, disposed of substantially all of his remaining holdings prior to the suspension of trading in FSN stock, realizing an additional personal profit of over \$500,000, including his sale three days before the suspension of 1,000 shares.

Financial Services Performed for
Four Seasons by Walston

While also holding substantial personal investment positions in FSN stock, Walston and its officers performed a wide range of financial services for FSN and its affiliated companies.

Following an introduction to Jack L. Clark in June 1968 arranged by Mr. McCollum, Mr. Crimmins formed a close personal as well as business relationship with Mr. Clark and other persons in FSN's management. By early November 1968, Mr. Crimmins had arranged a private purchase of 10,000 (pre-split) FSN shares from Mr. Clark and his associates. In March 1969, Mr. Crimmins arranged to purchase from these same individuals 10,000 additional FSN shares. Both purchases were at prices substantially below the market, and on unusually liberal credit terms.

Mr. McCollum, a member of Walston's corporate finance department under the supervision of Glenn L. Miller, Walston's Executive Vice-President, served as Walston's designee on FSN's board of directors, and he regularly attended board meetings. In addition to the firm's underwriting and financial advisory activities on behalf of FSN, Walston was instrumental in effecting the private placement with institutions of \$19.5 million principal amount of notes for FSN's mortgage affiliate, Four Seasons Equity Corporation. In February 1969, Walston acted as managing underwriter of a \$5 million public offering of common stock of Four Seasons Equity Corporation.

In addition to Walston's representation on FSN's board of directors through Mr. McCollum, Mr. Miller, the head of Walston's corporate finance department, and others in Mr. Miller's department, kept themselves informed of current developments in the company by means of direct contact with Jack L. Clark. As discussed in the Report, Mr. Crimmins and James Nissan (described by Mr. Miller as Walston's "largest producer") were assigned to sales functions. Nevertheless, Messrs. Crimmins and Nissan were permitted to acquire information concerning FSN obtained by the firm while performing corporate finance and underwriting functions and they were permitted to participate in negotiations for institutional placements required to finance at least two of FSN's projected new enterprises. These activities, afforded Messrs. Crimmins and Nissan access to material non-public information concerning FSN. Nevertheless, Walston failed to impose any meaningful restrictions on their activities in soliciting customer transactions in FSN stock.

Walston's Substantial Market Participation
in Four Seasons Stock

While occupying the special relationships with FSN described above, during a period of 17 months between December 1968, shortly after FSN shares first were listed on the Exchange, and April 30, 1970, when the Exchange halted trading in FSN stock, Walston effected on the Exchange purchase and sale transactions involving approximately 3,500,000 FSN shares, one out of every four shares of FSN stock traded on the Exchange during a period when total volume in the stock was approximately 13,800,000 shares.

As indicated in the Report, Walston's market activity frequently occurred at or about the same time as meetings between Messrs. Crimmins, Nissan, Miller

or McCollum and Jack L. Clark and his associates and discussions concerning corporate developments in FSN, including the following instances:

(i) On January 8, 1969, FSN announced publicly a proposed 2-for-1 split of the company's outstanding shares. Mr. Crimmins was aware in advance of this forthcoming development as the result of his prior consultations with Jack L. Clark concerning the advisability of the split. On December 27, 1968, Mr. Crimmins had received physical delivery (prior to any payment) of the first 10,000 FSN shares he purchased privately from Mr. Clark and his associates for \$35 per share. In the week preceding the stock split announcement, accounts serviced by Messrs. Crimmins and Nissan, including certain institutions, accounted for purchases of over 37,000 FSN shares, approximately 17% of total Exchange volume, including purchases by Mr. Nissan of 300 shares for his and his wife's account on January 7, 1969, the day before the stock split was announced. In the five weeks following FSN's 2-for-1 stock split announcement on January 8, 1969, FSN stock increased substantially in price, closing at 115 1/4 on February 14, 1969, an increase of approximately 100% in the price of the stock from the time of the public offering on November 28, 1968, and over three times the price which Mr. Crimmins had arranged to pay for the first 10,000 shares he purchased from FSN's principal officers. (See Report, Section 6(b))

(ii) On January 13, 1969, Mr. Crimmins, after spending the three prior days with Jack L. Clark in Oklahoma City and at the Superbowl game in Miami on January 12, 1969, accompanied Mr. Clark to a meeting at the offices of Gibraltar Growth Fund in Fort Lauderdale, Florida. Information was conveyed by Mr. Clark on this occasion concerning FSN's plans for the construction of additional nursing centers, which

information, including earnings projections, was embodied in a contemporaneous memorandum prepared by David O. Ehlers, the President of Gibraltar Growth Fund. In late January 1969, Messrs. Crimmins, McCollum and Ehlers visited Jack L. Clark in Palm Springs, California. Contemporaneously with substantial purchase activity in FSN stock by Gibraltar Growth Fund initiated on January 14, 1969, the day following the Florida meeting, other institutional customers of Walston serviced by Messrs. Crimmins, Nissan and Probert, were active on the buy side, including the Manhattan Fund which accumulated 48,000 FSN shares costing over \$5 million by March 3, 1969.

(See Report, Section 8)

(iii) On February 11, 1969, Mr. Crimmins personally realized over \$500,000 from a sale for his account of 4,200 FSN shares at 121 7/8. Although he then owed Messrs. Clark, Bouse and Gray the entire purchase price of \$350,000 on his initial purchase in November 1968 of 10,000 FSN shares, Mr. Crimmins did not pay any part thereof until March 15, 1969, after he had arranged to purchase a second block of 10,000 (post-split) shares from these same FSN officers. On the latter date, Mr. Crimmins made a partial payment on his first purchase of \$175,000 and a \$55,000 (20%) down payment against his second purchase, despite the fact that the then aggregate market value of the shares was in excess of \$1.8 million. (See Report, Section 8).

(iv) In late January 1969, Messrs. Crimmins and McCollum joined Jack L. Clark and several of his associates at a golf outing arranged by Mr. Clark in Palm Springs, California, and shortly thereafter, on February 4, 1969, Mr. Crimmins attended with Mr. Clark a seminar in New York City sponsored by Equity Research

Corp. On the latter occasion, Messrs. Crimmins and Nissan had discussions with representatives of prospective institutional investors in FSN securities concerning the financing of certain proposed projects of FSN. Thereafter, Mr. Crimmins was instrumental in obtaining commitments of \$2.2 million from two institutions he solicited as part of a \$19.5 million private placement of notes arranged by Walston and required to finance a proposed FSN mortgage affiliate, Four Seasons Equity Corporation. Glenn R. Miller testified that it was not customary for Walston sales personnel to participate in such private placements. (See Report, Section 12).

(v) Although Messrs. Crimmins and Nissan denied all knowledge of FSN's plans to organize a franchising subsidiary with a nucleus of \$13 million obtained through private placements with certain institutions (including Walston clients), the record indicates that Messrs. Crimmins and Nissan both were aware well in advance of the public announcement on April 7, 1969, of the salient details connected with the organization, purpose and financing of FSN's franchising subsidiary. (See Report, Section 10). Customers of Messrs. Crimmins and Nissan were particularly active in FSN stock during the two weeks immediately preceding the franchise program announcement, as Walston accounted for approximately 47% of total Exchange volume during this period. Among other transactions were purchases of 5,000 FSN shares between March 21 and April 3, 1969 for the accounts of James P. Linn and Julian D. Helm, officers of FSN's franchising subsidiary, followed by sales of 2,000 of these shares in these accounts at a profit shortly after the announcement, as well as Mr. Nissan's purchases on March 25, 1969 of 700 FSN shares for his and his wife's account. (See Report, Section 10).

(vi) Mr. Crimmins spent a good part of the week of March 31 to April 4, 1969 with Jack L. Clark in New York City, on business and social occasions. At the time Mr. Clark, assisted by Mr. Ehlers, was soliciting institutional interest in a private placement of \$13 million of securities for FSN's proposed new franchising subsidiary. Certain institutions approached to participate in this financing had been introduced originally to Mr. Clark by Walston. Following FSN's public announcement on April 7, 1969 of its proposed franchising operations, FSN stock again experienced a substantial increase in price. (See Report, Section II).

(vii) Mr. Miller and Mr. McCollum were alerted at least as early as the time of FSN's board of directors meeting held on March 10, 1970, of questionable practices taking place in FSN's management concerning personal loans to officers and FSN's loan from the State of Ohio and the relending of a fixed percentage of the loan proceeds to the finder in the transaction. In his discussion with Jack L. Clark on March 10, 1970, the same day Mr. McCollum signed a directors' consent to the transaction, Mr. Miller registered Walston's dissatisfaction with conditions in FSN and the firm's desire to withdraw as FSN's investment banker. These unfavorable developments in FSN should have made Walston aware of the possible impropriety of permitting sales transactions in FSN stock by persons associated with FSN and by officers of Walston having access to this information. Nevertheless, Walston permitted sales of FSN stock to be effected by Mr. Crimmins for his personal account on April 7, 1970, by Amos D. Bouse, Jr., on April 23 and 24, 1970, and by Mr. McCollum as late as April 27, 1970, immediately prior to public disclosure of facts which shortly thereafter led to the suspension of trading of FSN stock.

Failure of Mr. Fleming to Assure Compliance
by Walston with Exchange Standards

The record discloses that beginning as early as January 1969, clear and timely warnings were given by the Exchange to Mr. Fleming of the dangers associated with permitting unrestricted solicitation of customer purchase orders by Walston's sales personnel in view of the firm's extensive relationships with FSN.

Despite their awareness of Mr. Crimmins' close personal associations with Jack L. Clark and his associates, and despite repeated admonitions directed to him by the Exchange concerning possible improprieties in unrestricted solicitation of customer transactions in FSN stock, neither Mr. Fleming nor Mr. Miller took adequate steps to investigate thoroughly the full extent of Mr. Crimmins' relationships with Jack L. Clark and his associates or to control the active solicitation of customer transactions in FSN stock. (See Report, Section 12(a)).

One of the results of Walston's failure to restrict sales personnel in their use of material non-public information concerning FSN while soliciting open market purchases of FSN stock on the Exchange was to place a substantial portion of the floating supply of the stock in the hands of certain large institutional and individual accounts of Walston. As indicated on the chart attached to Appendix III, Walston's market participation appears to have contributed materially to periodic sharp price fluctuations in FSN stock on several occasions discussed in the Report. This occurred, among other times, in December 1968 prior to the announcement of FSN's 2-for-1 stock split (See Report, Section 6(b)) and late in March 1969, prior to the first public announcement of FSN's franchising program (See Report, Section 10).

Lack of Candor in Testimony
Given to the Exchange

Mr. Crimmins was requested by the Exchange to appear for the first time on November 25, 1969 to answer questions relating to Walston's activities in FSN stock and his relationships with FSN, including the extent of his personal holdings of FSN stock. Previously, in January 1969, and again in June 1969, Mr. Crimmins was made aware of the Exchange's concern about Mr. Crimmins' solicitation of customer transactions in FSN stock in view of Mr. Crimmins' social and business relationships with FSN's officers.

Mr. Crimmins testified initially that he owned only 600 FSN shares. Upon being confronted with an FSN shareholder list disclosing his holdings of 31,600 shares, Mr. Crimmins revealed that he had acquired 30,000 shares below the market in private purchases from FSN's three principal officers. Mr. Crimmins neither sought or obtained the Exchange's permission for these off-board purchases.

In response to interrogation at his initial interview on November 25, 1969, concerning his indebtedness to Messrs. Clark, Bouse and Gray, Mr. Crimmins gave a misleading impression that he had paid a total of approximately \$500,000 on account of the \$650,000 he then owed for the 30,000 FSN shares. Upon being recalled by the Exchange on January 29, 1970, Mr. Crimmins admitted that at the time of his previous testimony he had paid Messrs. Clark, Bouse and Gray only \$230,000, and that he still owed them \$420,000, exclusive of interest.

Mr. McCollum, at his Exchange interview on May 7, 1970, sought to convey an impression that he lacked personal knowledge of certain questionable transac-

tions undertaken by FSN, including loans made by the company to its own officers in 1969, FSN's borrowings with the State of Ohio and the related arrangement to relend 20% of the loan proceeds to the finder. Mr. McCollum's disclaimer of knowledge of this material information sought by the Exchange does not bear scrutiny in the light of all of the circumstances, including Mr. McCollum's extensive personal contacts with FSN's officers, his regular attendance at FSN board meetings, minutes of which were signed by him, and the fact that Mr. McCollum and other Walston personnel in the firm's Chicago office were kept currently apprised of FSN's affairs while performing substantial financial services for the company.

It appears from the foregoing that neither Mr. Crimmins nor Mr. McCollum made full and candid disclosure of material matters which were the subject of the Exchange's investigation of FSN so as to assist the Exchange in accomplishing the objectives of the investigation. Moreover, it appears that Mr. Crimmins sought to withhold information concerning his personal dealings with Messrs. Clark and Bouse, and in so doing he made a misstatement to the Exchange on a material point with respect to the extent of his personal obligations on his private purchases of FSN stock.

POSSIBLE VIOLATIONS

Investigation reveals:

1. William D. Fleming and Glenn R. Miller, by reason of their own acts and omissions and by reason of their responsibility, pursuant to Article V, Section 4(p) of the Constitution, for the acts and omissions of Walston; Gordon H. McCollum, Frank J. Crimmins and James Nissan, pursuant to Rule 345 of the Board of Governors; and Walston may be chargeable with conduct or proceeding inconsistent with just and equitable principles of trade in the pattern of circumstances described in this Report, in that:

(i) In view of the special relationship of Walston and its officers as principal investment banker, financial adviser and underwriter for FSN and its affiliates; the substantial fees which Walston was receiving for these services; the access which Walston and its officers had to inside information concerning the operations, policies and plans of FSN; and the substantial financial investment which the firm, its officers and many of its large institutional and other customers had in FSN and its affiliates, Walston and its officers had an obligation to their customers, to the investing public and to the Exchange to avoid engaging in activities which could be construed as serving their own self-interests. Despite this obligation, Walston and its officers engaged in an extensive and continuing effort to solicit and promote interest and market activity in the stock of FSN during practically the entire period the stock was traded on the Exchange. As disclosed by the facts set forth in this

Report, this effort involved the active solicitation of public customers through the multi-branch sales organization of Walston as well as the concerted activities by Mr. Crimmins and Mr. Nissan to develop substantial institutional interest in FSN. This extensive market activity by Walston and its officers continued even during periods when the firm was engaged in arranging additional financing for FSN and its affiliates and despite the fact that the Exchange repeatedly raised questions with Walston and certain of its officers concerning the propriety of such solicitation and sales efforts in view of the firm's special relationship to FSN.

(ii) As a result of the extensive solicitation and concerted efforts by Walston and its officers to promote interest and develop market activity in the stock of FSN, Walston effected purchase and sale transactions on the Exchange involving approximately 3,500,000 FSN shares from December 1968 through April 1970. This activity accounted for over 25% of the total Exchange volume in FSN stock during the period. In late 1968 and early 1969, there were several weeks when Walston's combined purchase and sale transactions accounted for as much as 40% to 50% of Exchange volume in the stock. The price of FSN stock rose from approximately \$28* in November 1968 to over \$90 in October 1969, and thereafter declined

* Adjusted for 2-for-1 stock split in March 1969.

to approximately \$30 at the time of the Exchange's trading halt in April 1970. Throughout this period, Walston and its principal officers continued to hold substantial positions in FSN stock and thereby benefited from the increased market price of the stock resulting from the extensive public and institutional interest in the security. These holdings, which had a cost basis of approximately \$1 million, reached a market value of over \$20 million in October 1969. In addition to the profits of several million dollars realized by Walston and certain of its officers in connection with their sale of FSN stock in November 1968, Messrs. McCollum and Crimmins made further market sales in 1969 and 1970, realizing substantial profits. Moreover, Walston continued to receive substantial fees from FSN and its affiliates as a result of the underwritings and financings which it was instrumental in arranging for FSN. Its ability to successfully arrange such financings for FSN was facilitated by the widespread interest and market activity in FSN stock. The course of conduct by Walston and its officers in engaging in solicitation to the extent disclosed by this Report and their concerted efforts to promote interest and market activity in the stock of FSN while maintaining the special relationships they had established with FSN and while continuing to hold substantial positions in FSN stock, tended to serve and enhance their own personal interests, and was in direct conflict with the duty of fair dealing which they owed to their customers, to the investing public and to the Exchange.

2. Walston may be chargeable with acts detrimental to the interest or welfare of the Exchange in the pattern of circumstances described in this Report, in that Walston failed to develop and enforce adequate procedures and policies for controlling and supervising the activities of its sales personnel to assure that such activities did not conflict with the obligations imposed upon the firm as a result of its investment banking, financial advisory and underwriting relationships with FSN, and to assure that its sales personnel did not have access to, nor were enabled to make use of, confidential information relating to FSN's operations, expansion programs and financing plans, which confidential information was received by Walston as a result of the investment banking and financial advisory services it rendered to FSN.

When a member firm of the Exchange and its officers establish a relationship with a publicly held company and acquire a very substantial financial interest in the company under circumstances such as disclosed in this Report with respect to Walston and FSN, the member firm has a duty to insure that it has adequate procedures and controls to prevent activities by the firm and its personnel which may further their own self-interests and conflict with the firm's duties to its customers and to other public investors. In this connection the firm is obligated to carefully supervise and restrain selling activities which may have the effect of creating public interest and market activity in the security that will redound to the benefit of those carrying on such activities. Moreover, it has a duty to assure that sales personnel are insulated from access to confidential information gained as a result of the firm's investment banking and financial advisory relationships with the company. As appears from the facts set forth in this Report, Walston and its officers not only failed to develop and enforce

adequate procedures and controls, but they permitted widespread solicitation and the stimulation of market interest in the stock of FSN when they knew or should have known that the persons engaged in such activities stood to gain personal financial advantage therefrom. Walston failed to take any steps to curb these activities even though representatives of the Exchange on several occasions met with officers of the firm and pointed out the serious problems which could result from such activities.

3. Frank J. Crimmins, by reason of his own acts and omissions, may be chargeable, pursuant to Rule 345 of the Board of Governors, with acts detrimental to the interest or welfare of the Exchange, in the pattern of circumstances described in this Report, in that:

(i) Mr. Crimmins, while testifying on November 25, 1968 before duly authorized representatives of the Exchange, made a misstatement upon a material point concerning the extent of his personal indebtedness to Messrs. Jack L. Clark, Amos D. Bouse, Jr. and Tom Gray, the three principal officers and shareholders of FSN, arising out of Mr. Crimmins' purchase of 30,000 unregistered shares of FSN stock for \$650,000.

(ii) Frank J. Crimmins engaged in transactions off the Exchange in FSN stock with Jack L. Clark, Amos D. Bouse, Jr., and Tom Gray, without requesting or receiving permission from the Exchange as required by Rule 5 of the Board of Governors, which provides in pertinent part: "A member * * * shall execute on the Exchange all transactions, whether acting as principal or as agent, in stocks * * * admitted to dealings on the Exchange, except * * * (2) transactions made with prior permission of the Exchange * * *."

4. Gordon H. McCollum, by reason of his own acts and omissions, may be chargeable, pursuant to Rule 345 of the Board of Governors, with conduct or proceeding inconsistent with just and equitable principles of trade, in the pattern of circumstances described in the Report, in that he sold on the Exchange on April 27, 1970, for his personal account 1,000 shares of FSN stock while he was in possession of material non-public information concerning adverse corporate developments in FSN. This information was of such a serious nature as to prompt the Exchange, when it became aware thereof, to halt trading in FSN stock three days later on April 30, 1970.

I

INTRODUCTION

The Report of Investigation rendered by the American Stock Exchange ("Amex") (the "Report") is ultimately a basic attack on the propriety of combining, in one firm, the functions of retail brokerage and investment banking. The tenor and tone of the Report is such as to clearly suggest that Amex should use its authority to compel the separation and ultimate divorce of the retail brokerage and investment banking functions.

The Report does not declare this objective in explicit language but that purpose is pervasive and persistent throughout.

Indeed, the first stated possible violation is readily seen to be in essence that: In view of the special relationship of Walston and its officers as principal investment banker, Walston had an obligation to avoid engaging in extensive and continuing effort to solicit and promote interest and market activity in the stock. (Report, p. 71)

In furtherance of this concept the Report declares:

"The course of conduct by Walston and its officers in engaging in solicitation to the extent disclosed by this Report and their concerted efforts to promote interest and market activity in the stock of FSN while maintaining the special relationships they had established with FSN and while continuing to hold substantial positions in FSN stock, tended to serve and enhance their own personal interests, and was in direct conflict with the duty of fair dealing which they owed to their customers, to the investing public and to the Exchange." (Report, p. 73)

Walston wholly denies the conclusions embodied in that charge. Walston asserts that there is nothing improper about combining in one firm the functions of banker and broker. Walston avers that when a member firm is an investment banker or underwriter it is not a violation of Amex rules or any law to engage in solicitation or promotion, whether that is done regularly or sporadically and whether it be done on a small or a significant scale.

Walston is wholly unaware of any rule or standard which, in the face of a fully disclosed relationship of investment banker and shareholder, forbade or prohibited an extensive and continuing effort to solicit and promote interest and market activity in the stock of an issuer so long as the solicitation, whether regular or intermittent, large or small, is based upon information which is in the public domain.

At a time when the Amex was fully aware of the relationships of Walston and FSN, and was informed of Walston's shareholdings in FSN, and of Walston's share of the market, and of most of the matters dealt with in the Report, the Exchange said:

"The Exchange does not intend to imply that there is any impropriety in the existence of a close relationship between your firm and Four Seasons. Its concern is rather with the absence of proper controls, in view of this relationship, to ensure that any solicitation is based solely upon information which is in the public domain. . ." (Amex letter to Walston, August 20, 1969)

The four institutions' relationship with Walston was one of broker and institution. After an initial introduction by Walston to FSN, subsequent decisions to acquire more stock or liquidate stock were made independently of Walston. The four funds mentioned above went directly to the Company for information and in many cases knew more about FSN than did Walston. It is inconceivable that Walston would be able to control the level of activity by these four institutions in FSN stock.

(2)

The Report contains many errors with regard to Walston's market participation in the stock of FSN. A most critical and basic error is the following statement:

" . . . Walston effected on the Exchange purchase and sale transactions involving approximately 3,500,000 FSN shares, one out of every four shares of FSN stock traded on the Exchange during a period when total volume in the stock was approximately 13,800,000 shares." (Report, p. 63)

As every registered representative is aware, volume figures published by the Exchange reflect only one side of a transaction, the sell side. Consequently, it is totally misleading to compare the combined and totalized purchases and sales by a member with the selling volume on the Exchange. The above figure should be one out of every eight shares traded on the Exchange. This amazing misstatement occurred not once but eleven times in the Report.* The

*Pages 8, 23, 28, 32, 41, 44, 44, 63, 66, 72, and 72.

Report, therefore, magnified Walston's participation in the market by 100%.

Furthermore, the Exchange apparently used incorrect statistical information. For example, much is made of the level of trading activity by Walston in the week ended March 28, 1969, as indicated below:

"In the single week ended March 28, 1969, Walston's combined purchases and sales aggregated 183,000 shares, equal to 56% of total Exchange volume that week of 328,000 shares." (Report, p. 32)

The above statement is incredible. Walston purchased 31,400 shares and sold 47,100 shares which are equal to 9.6% on the buy side and 14.3% on the sell side of total volume of 328,000 shares. Once again, it is absolutely wrong to add the two percentages together. Incidentally, the corrected figures were obtained from the Exchange's own daily clearing reports.

Additionally, a material error of omission occurs in the Report as follows:

"Records of Walston indicate that by January, 1970, slightly over a year after FSN stock was admitted to trading on the Exchange, customers of Walston held approximately 500,000 shares out of a floating supply then estimated at approximately 1,700,000 shares." (Report, p.8)

First, the floating supply figure should be 1,900,000 shares, but more importantly, customers of Walston, by the end of the first month of trading on the Exchange, held more than 500,000 shares of FSN stock. Walston sold approximately 350,000 (split) shares to its customers in the first offering on May 9, 1968, and it sold approximately 500,000 (split) shares to its customers on the secondary on November 26, 1968. Therefore, clients of Walston purchased 850,000 shares on the two public offerings. Excluding the four institutions mentioned above, clients of Walston still purchased about 780,000 shares. It is not at all surprising, therefore, that by January, 1970, our clients still held 500,000 shares. It does, however, undermine the Exchange's claim that Walston engaged in "extensive solicitation and concerted efforts to promote interest and develop market activity in the stock of FSN." (Report, p. 72)

The fact of the matter is that clients of Walston with 500,000 shares (or more), or 25% of the floating supply of FSN, transacted 12-1/2% of the volume, while other members of the Exchange, with 75% of the floating supply, transacted 87-1/2% of the volume.*

Another material error occurs in Appendix III, where it is stated:

*Two other material errors occurred in Appendix II: For the week ended May 2, 1969, Walston purchased 44,700 shares, not 65,600 shares; and it sold 22,500 shares, not 46,000 shares. For the week ended July 31, 1969, Walston purchased 41,000 shares, not 142,000 shares; and it sold 19,500 shares, not 124,900 shares. Once again, the figures were obtained from the Exchange's own daily clearing reports.

". . . the heaviest concentration of selling [by Walston] occurred in weeks when FSN stock had its sharpest interim price rises in January, April, and July, 1969, and in particular during the month of October, 1969 . . ." (Appendix III, p.i)

Walston had net purchases of 3,014 during the two weeks in January, 1969 (January 13 - January 24) when the stock price increased from 42-5/8 to 56-1/8. During the first two weeks of April 1969 (April 1 - April 11), when the price increased from 59-3/8 to 69, Walston did have net sales of 59,900 shares. However, 64% of this figure (or 38,300 shares) consisted of sales by IDS and Hedge Fund. The stock was flat in the latter part of April 1969 (April 21 - April 25); Walston had net sales of 18,100 shares (excluding a 4,800 share sale by IDS). The stock increased in the week ended May 2, 1969 (April 28 - May 2) and Walston had net purchases of 21,200 shares.

In July 1969, when the price of the stock declined steadily from 74-1/2 to 52, Walston had net purchases of 15,100 shares. In the second and third weeks of October, 1969 (October 6 - October 17), Walston did have net sales of 95,200 shares when the stock increased from 70-1/8 to 85. However, 63% of this figure, or 60,000 shares, consisted of

(ix)

sales by IDS.

The Report's statement that "the heaviest concentration of selling" by Walston occurred in the foregoing periods simply does not withstand scrutiny. It is untrue in as many cases as it is true. The Report is thus drawing conclusions based on an improper use of the statistics. These conclusions are then used to portray a totally inaccurate picture of what actually occurred.

The Report implies incorrectly that Walston accentuated fluctuations in the price of FSN by loaning stock to other brokers and that it covered its short position by calling back 47,700 shares in October, 1969.

"On October 15, 1969, Walston had 108,700 FSN shares on loan to other brokers and had called back 47,700 shares to cover the firm's short position in the stock. The Exchange's October 15, 1969, short position report indicated that the short position in FSN stock had reached 246,595 shares. Inasmuch as the then estimated floating supply of the stock was approximately 1,716,000 shares, of which 962,000 shares reportedly were held by institutions, the short position approached 40% of the estimated remaining supply of approximately 957,000 shares and served to accentuate fluctuations in price as short sellers sought to cover." (Report, pp. 47-48)

Because of the amount of stock held by Walston for its customers, it would naturally be the major lender

(x)

of stock; Walston did not in any way create the short interest in FSN stock and could not control the level of short interest. Furthermore, Walston recalled 47,700 shares in October, 1969 to cover its fail to deliver (not short) position since its customers had sold more stock than they bought. The firm never sold the stock short.

The price of FSN stock was indeed volatile during the period in which it traded on the Exchange. There are many reasons for this volatility, including:

- 1) General market conditions deteriorated during the period as the stock market entered a protracted period of declining prices lasting throughout most of 1970.
- 2) FSN was a leader in the nursing home industry; that industry received much favorable comment and generated considerable investor enthusiasm in 1968 and 1969.
- 3) FSN had a low capitalization with less than 2,000,000 shares in the public hands during this period.
- 4) The stock of FSN had attracted a significant number of short sellers.
- 5) The stock of FSN was held in large proportions

by institutions.

Nevertheless, the Report attempts to attribute this volatility to Walston basically on two grounds:

1) Walston interested institutions in the stock on November 26, 1968.

2) Walston loaned stock to short sellers.

As manager of a syndicate of underwriters of \$34,971,000 in securities, with a clear-cut obligation to do its best to distribute those securities, Walston did in fact interest institutions in the stock at the time of the offering.* Institutions were interested in purchasing the stock for primarily two reasons. FSN had recently been listed, and it was also projecting a period of rapid growth because of the organization and financing of Four Seasons Equity Corporation. Institutions did not buy FSN stock because Walston wanted them to, but because they felt that it was a good investment. To suggest otherwise is to totally ignore the realities of the securities business.

Once introduced to this situation, these investors

*On page 72, the Report states: "This extensive market activity by Walston and its officers continued even during periods when the firm was engaged in arranging additional financing for FSN and its affiliates.... This statement is wrong. In fact, Walston accepted only unsolicited orders in the 30 days preceding the November 26, 1968, secondary and since the offering of \$15,000,000 in Debentures was consummated outside the United States, no action was necessary with respect to Walston's sales activity in the United States.

made up their own minds to increase or decrease their investment. Numerous institutions visited Oklahoma City and talked to Mr. Clark and other officers. In this framework, there was little reason to rely upon Walston for investment advice.

Walston, because of the ownership of FSN stock by its clients, was naturally a source of stock for short sellers. However, we did not encourage short selling. In fact, the few reports we did prepare were recommendations of the stock.

(4)

A review of Charts I and II of Exhibit A demonstrates Walston's market participation in the stock.*

a. November-December, 1968.

Beginning with the secondary, November 26, 1968, clients of Walston were active in the stock until about December 10, 1968, as short-term traders either purchased more stock or took profits. From December 10 through the end of the year, Walston's activity was restrained as it

*Volume and price figures are there adjusted for the 2-for-1 stock split.

CONFIDENTIAL

AMERICAN STOCK EXCHANGE, INC.

November 24, 1971

TO: The Board of Governors

Subject: Charges Preferred, Pursuant to Rule 345 of the
Board of Governors of the American Stock Exchange
(the "Exchange") against Frank J. Crimmins, an
Officer and Voting Stockholder of the Regular
Member Organization of Walston & Co., Inc.
("Walston")

Background

The following Charges relate to the conduct of Frank J. Crimmins in connection with his activities with respect to the common stock of Four Seasons Nursing Centers of America, Inc. ("FSN") and his relationships with certain officials of FSN. These matters are set forth in the attached Report, dated March 1, 1971 (the "Report"), prepared by the Exchange. The Report is incorporated in, and made a part of, these Charges.

Frank J. Crimmins became a Vice-President and voting stockholder of Walston on June 24, 1965. During the period covered by these Charges, Mr. Crimmins was manager of Walston's branch office at 1290 Avenue of the Americas, New York City. Prior to joining Walston, Mr. Crimmins had been employed as a registered representative with Shields & Company for approximately six years, and before that with Merrill Lynch, Pierce, Fenner & Smith and with Newburger, Loeb & Co., all of which firms are regular member organizations of the Exchange.

CHARGE I

Frank J. Crimmins engaged in conduct or proceeding inconsistent with just and equitable principles of trade in the pattern of circumstances described in the Report, in that:

(1) Mr. Crimmins, as an officer of Walston, was aware of and took an active part in maintaining the special relationship between Walston and FSN described in the Report. This special relationship involved the activities of Walston as principal investment banker, financial adviser and underwriter for FSN and its affiliates, the access which Walston and its officers had to inside information concerning the operations, policies and plans of FSN, and the substantial financial investment which the firm, its officers and many of its large institutional and other customers had in FSN and its affiliates. Mr. Crimmins established a close personal and business relationship with the principal officers of FSN commencing in the summer of 1968 and thereafter he maintained frequent and close contacts with such officers throughout most of the period covered by the Report. He opened and serviced brokerage accounts for these officers at Walston. He was active in assisting FSN and its affiliates in arranging certain financings. As a result of this relationship, Mr. Crimmins frequently was in a position to obtain information concerning FSN which had not been publicly disclosed. Mr. Crimmins was also a partner in Montgomery

Company, a venture capital partnership comprised of various officers and shareholders of Walston, which made a \$500,000 investment in FSN in the fall of 1967 in exchange for a substantial block of FSN stock.

Mr. Crimmins further acquired a substantial number of shares of FSN stock personally, the major portion of which was purchased from the principal officers of FSN under agreements providing for extended periods of payment and at unusually low interest rates. As a result of these purchase arrangements, Mr. Crimmins became and remained heavily indebted to the principal officers of FSN. In view of this special relationship with FSN and its principal officers, Mr. Crimmins had an obligation to the customers of Walston, to the investing public and to the Exchange to avoid engaging in activities which could be construed as serving his own self-interest and the special interests of his firm.

(ii) Despite this obligation, Mr. Crimmins engaged in an extensive and continuing effort to solicit and promote interest and market activity in the stock of FSN during practically the entire period the stock was traded on the Exchange and to further similar activities on the part of other officers of Walston. As disclosed by the facts set forth in the Report, this effort involved the active solicitation of public customers by Mr. Crimmins and other officers of Walston as well as their concerted activities to develop substantial institutional interest in FSN. This extensive market activity, in which Mr. Crimmins was a principal

participant, continued even during periods when the firm was engaged in arranging additional financing for FSN and its affiliates and despite the fact that Mr. Crimmins was aware of the serious concern expressed to his firm by the Exchange with respect to such solicitation and sales efforts by Walston, and by Mr. Crimmins in particular, in view of the special relationship existing between FSN and Walston and its officers. Walston effected purchase and sale transactions on the Exchange involving approximately 3,500,000 FSN shares from December through April 1970.

A significant portion of this trading volume was accounted for by sales activities of Mr. Crimmins. This market activity by Walston accounted for over 25% of the total Exchange volume in FSN stock during the period.

In late 1968 and early 1969, there were several weeks when Walston's combined purchase and sale transactions accounted for as much as 40% to 50% of Exchange volume in the stock. The price of FSN stock rose from approximately \$28* in November 1968 to over \$90 in October 1969 and thereafter declined to approximately \$30 at the time of the Exchange's trading halt in April 1970. Throughout this period Mr. Crimmins continued to hold a substantial position in FSN stock and thereby benefited from the increased market price of the stock resulting from the extensive public and institutional interest in the security. Mr. Crimmins sold 4,800

*Adjusted for 2-for-1 stock split in March 1969.

shares of FSN stock in the spring of 1970 at a substantial profit and used a portion of the proceeds to purchase additional restricted shares of FSN from the principal officers of FSN at a price substantially below the then market price. In addition, Montgomery Company, in which Mr. Crimmins had an interest, continued to hold a substantial block of FSN stock which had a cost basis of approximately \$1 million and which reached a market value of over \$20 million in October 1969.

Moreover, Walston continued to receive substantial fees from FSN and its affiliates as a result of the underwritings and financings which it was instrumental in arranging for FSN and which were facilitated by the widespread interest and market activity in FSN stock. The course of conduct by Mr. Crimmins in engaging in solicitation and in concerted efforts to promote interest and market activity in the stock of FSN to the extent disclosed in the Report while maintaining the special relationships that existed with FSN and its principal officers and while continuing to hold, both directly and indirectly, substantial positions in FSN stock, tended to serve and enhance his own personal interest and the special interests of his firm, and was in direct conflict with the duty of fair dealing which he owed to the customers of Walston, to the investing public and to the Exchange.

CHARGE 2

Frank J. Crimmins engaged in acts detrimental to the interest or welfare of the Exchange, in the pattern of circumstances described in the Report, in that:

(i) Mr. Crimmins, while testifying on November 25, 1969, before duly authorized representatives of the Exchange, made a misstatement about a material point concerning the extent of his personal indebtedness to

Messrs. Jack L. Clark, Amos D. Bouse, Jr. and Tom Gray, the three principal officers and shareholders of FSN, arising out of Mr. Crimmins' purchase of 30,000 unregistered shares of FSN stock for \$650,000.

(ii) Mr. Crimmins engaged in transactions off the Exchange in FSN stock with Jack L. Clark, Amos D. Bouse, Jr. and Tom Gray, without requesting or receiving permission from the Exchange as required by Rule 5 of the Board of Governors, which provides in pertinent part:

"A member * * * shall execute on the Exchange all transactions, whether acting as principal or as agent, in stocks * * * admitted to dealings on the Exchange, except * * * (2) transactions made with prior permission of the Exchange * * *."

CHARGE 3

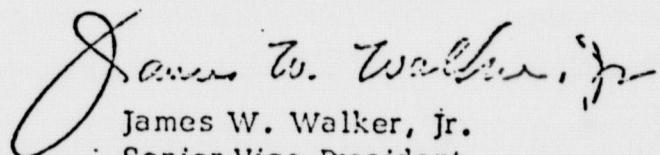
Frank J. Crimmins engaged in conduct or proceeding inconsistent with just and equitable principles of trade in that in connection with his purchases of 20,000 shares of FSN stock from the principal officers of FSN in November 1968 and March 1969, as described on pages 11 through 18 of the Report, Mr. Crimmins

willfully caused a violation of Section 220.7(a) of Regulation T (annexed hereto as Exhibit A) under the Securities Exchange Act of 1934 by arranging for the extension of credit to him with respect to the payment for such shares on terms and conditions more favorable than those permitted under the applicable provisions of Regulation T.

* * * * *

The above charges against Frank J. Crimmins are to be heard by the Board of Governors of the Exchange and Mr. Crimmins shall be entitled to be present at such hearing. A copy of these charges is to be served upon Frank J. Crimmins as provided by Rule 345 of the Board of Governors.

Respectfully submitted,



James W. Walker, Jr.
Senior Vice President
American Stock Exchange, Inc.

Regulation T

Section 220.7(a)

A creditor may arrange for the extension or maintenance of credit to or for any customer of such creditor by any person upon the same terms and conditions as those upon which the creditor, under the provisions of this Part, may himself extend or maintain such credit to such customer, but only upon such terms and conditions, except that this limitation shall not apply with respect to the arranging by a creditor for a bank subject to Part 221 of this chapter (Regulation U) to extend or maintain credit on margin securities or exempted securities.

EXHIBIT A

AMERICAN STOCK EXCHANGE, INC.
EXCHANGE DISCIPLINARY PANEL

----- x -----

Disciplinary Proceedings : INTERROGATORIES
Against Frank J. Crimmins and
Pursuant to Charges dated NOTICE TO PRODUCE
November 24, 1971 :
----- x -----

Frank J. Crimmins requests that the American Stock Exchange, Inc. ("Exchange"), by a representative thereof, answer under oath, in accordance with Rule 33 of the Federal Rules of Civil Procedure, and produce at the office of the undersigned, in accordance with Rule 34 of the Federal Rules of Civil Procedure, within 30 days, the interrogatories hereinafter set forth and the items hereinafter requested for production.

Charge 1

1. Does the Exchange claim that it constitutes unjust and inequitable conduct or that any of its rules are violated when a member firm simultaneously acts as underwriter for the stock of a company while its registered representatives are recommending the stock to their customers? If so, set forth a copy of the published rule, regulation or interpretation so stating.

2. Does the Exchange claim that its rules are violated when a member firm which owns a block of stock in a company has its registered representatives recommend the purchase of that stock to their customers? If so, set forth a copy of the published rule, regulation or interpretation

3. Does the Exchange claim that its rules are violated when a member firm which acts as investment banker for a company has its registered representatives recommend the purchase of stock in that company to their customers? If so, set forth a copy of the published rule, regulation or interpretation so stating.

4. Does the Exchange claim that its rules are violated when a registered representative of a member firm simultaneously owns stock of a company and recommends the purchase of that stock to his customers? If so, set forth a copy of the published rule, regulation or interpretation so stating.

5. (a) Does the Exchange claim that its rules are violated when a registered representative of a member firm purchases restricted stock of a company from the principals of that company? If so, set forth a copy of the published rule, regulation or interpretation so stating.

(b) Does the Exchange claim that its rules are violated when such registered representative is in-

debted to such principals for such purchase? If so, set forth a copy of the published rule, regulation or interpretation so stating.

6. Does the Exchange claim that its rules are violated when such principals are permitted to open accounts with the member firm? If so, set forth a copy of the published rule, regulation or interpretation so stating.

7. Does the Exchange claim that its rules are violated when a registered representative of a member firm who owns stock of a company introduces the principals of that company to lending sources? If so, set forth a copy of the published rule, regulation or interpretation so stating.

8. Does the Exchange claim that a combination of any or all the facts in questions 1-7 above constitutes a violation of its rules? If so, set forth the particular combination which it is claimed is such a violation and which is alleged to be involved in this proceeding and set forth the published rule, regulation or interpretation stating that such facts constitute a violation of Exchange rules.

9. Does the Exchange claim that its rules are violated when a registered representative of a member firm purchases restricted stock of a listed company and pays

less than the market price for unrestricted (free) stock of such company on the date of purchase? If so, set forth the published rule, regulation or interpretation which so states.

10. -

11. Set forth the specific published rule, regulation or interpretation which the Exchange claims required Frank J. Crimmins to refrain from recommending the stock of Four Seasons Nursing Centers of America, Inc. ("FSN") to his customers.

12. Does the Exchange claim that such solicitation by Frank J. Crimmins was not sanctioned and encouraged by Walston & Co., Inc.?

13. Does the Exchange claim that Frank J. Crimmins was acting contrary to instructions from his superiors at Walston when he

- (a) introduced FSN to a borrowing source?
- (b) opened and serviced brokerage accounts for certain FSN officers?
- (c) purchased FSN stock?

14. Does the Exchange claim that Frank J. Crimmins actually obtained "inside information" regarding FSN or that he was merely in a position to do so?

15. Does the Exchange claim that the ability to obtain inside information as to a company, without more, results in a duty to refrain from solicitation of orders for the stock of that company? If so, set forth the published rule, regulation or interpretation so stating also setting forth the date of publication.

16. Does the Exchange claim that one who possesses but does not use "inside information" thereby violates an Exchange rule? If so, set forth the published rule, regulation or interpretation which so states.

17. If it is claimed that Frank J. Crimmins had "inside information," set forth the published rule, regulation or interpretation which defines "inside information," specify the information he allegedly had and explain how such information is included in such definition. Also set forth the alleged source of this information, the date he acquired it and the circumstances.

18. Does the Exchange claim that Frank J. Crimmins used any "inside information", either for his own benefit, the benefit of Walston or of his customers? If so, specify

for whose benefit, set forth the substance of that information, the date he allegedly used it and the manner in which it is claimed he made use of such information.

19. Does the Exchange claim that Frank J. Crimmins had the authority or ability to change or countermand any Walston policies?

20. Does the Exchange claim that Frank J. Crimmins had the authority or ability to change or countermand Walston policies with respect to maintaining advisory relationships with FSN?

21. Does the Exchange claim that actions taken by an employee of a member firm, after approval by the firm's management and its compliance department, can constitute a violation of Exchange rules by the employee warranting punishment of the employee? If so, set forth the published rule, regulation or interpretation which so states.

22. Does the Exchange claim that Frank J. Crimmins was not required to obey the policies set by Walston's management?

23. Does the Exchange claim that Walston manipulated the market price of FSN stock?

24. Does the Exchange claim that Frank J. Crimmins manipulated the market price of FSN stock? If so, set forth the date or dates on which such market manipulation allegedly occurred, the manner in which it was accomplished and the extent to which the price change in FSN stock is attributed to Frank J. Crimmins.

25. Does the Exchange claim that Frank J. Crimmins' volume of business in FSN stock was disproportionately large as compared to his other business? If so, set forth the statistical data upon which such conclusion is based. Does such data discount the FSN business which was unsolicited? If so, set forth the amount of such discount.

26. With respect to the "substantial fees" which the charges (p. 5) allege were received by Walston, what portion of such fees does the Exchange claim was received by Frank J. Crimmins? What portion was earned by him?

27. With respect to the volume of activity in FSN stock described on page 4 of the Charges, what portion of such trading does the Exchange attribute to Frank J. Crimmins?

28. With respect to the price rise and fall of FSN stock described on page 4 of the Charges, what portion of such rise and of such fall does the Exchange attribute to Frank J. Crimmins.

29. With respect to the last sentence of Charge 1, how does the "personal interest" of Frank J. Crimmins differ from that of any ordinary purchaser of stock?

30. (a) Does the Exchange claim that its rules were violated by the alleged sale by Frank J. Crimmins of 4,800 FSN shares (p. 4 of Charges) in the Spring of 1970?
(b) Does the Exchange claim that its rules were violated

by his use of a portion of the proceeds to buy restricted FSN stock? If so, set forth the published rule, regulation or interpretation which so states.

31. Does the Exchange claim that Frank J. Crimmins was under a duty to refrain from recommending a stock to his customers if Montgomery Company held a position in such stock? If so, set forth the published rule, regulation or interpretation containing that obligation.

32. Does the Exchange claim that the percentage of ownership which Frank J. Crimmins had in Montgomery Company was a significant percentage ownership?

33. (a) Does the Exchange claim that Frank J. Crimmins had control over or responsibility for the investment policies and decisions of Montgomery Company? If so, detail the means by which such control or responsibility existed and specify whether the Exchange contends that Mr. Crimmins had control or responsibility, or both, for such policies and decisions.

(b) Does the Exchange claim that Frank J. Crimmins exercised such control or responsibility? If so, detail the circumstances and specific instances when such exercise of control took place and the grounds for so believing.

34. State the grounds upon which the Charges allege, at page 4, that "...Mr. Crimmins was aware of the

serious concern expressed to his firm by the Exchange with respect to such solicitation and sales efforts...."

35. Set forth a complete text of such expressions of concern, the date of each such communication and the person or persons to whom such communication(s) were directed.

36. Did the Exchange receive a reply from Walston to its expression of concern? If so, set forth a complete text thereof.

37. Did the Exchange understand that reply to state explicitly or implicitly that Mr. Crimmins acted as he was expected to by Walston in soliciting interest in FSN, in rendering financial advice to FSN, in maintaining brokerage accounts for FSN officers and in referring FSN to two lending sources?

38. Does the Exchange claim that Mr. Crimmins had the authority to countermand the interpretation of Exchange rules by his superiors and their application to his activities, even after the Exchange expressed its "concern".

39. Does the Exchange claim that Mr. Crimmins should have refused to perform the functions Walston expected of him as specified in question 37?

40. Did Walston communicate with the Exchange soon after its informal discussions with Walston on January 8 and 15, 1969 and advise that it was instructing Mr. Crimmins to resume his solicitation efforts with respect to FSN stock?

41. Why didn't the Exchange direct Walston to stop those activities after Walston stated that it believed those activities to be proper, approved and encouraged such activities and that it saw no reason to and did not intend to curb such activities.

42. Does the Exchange view the conduct of Mr. Crimmins with respect to FSN to be more seriously violative of its rules than the conduct of Gordon M. McCollum? If so, set forth a detailed explanation of why the Exchange holds this view.

43. With respect to page 5 of the Charges, lines 12 and 13, is it claimed that Mr. Crimmins engaged in "concerted efforts to promote interest and market activity in the stock of FSN" which activities are not included within the term "solicitation"? If so, set forth the alleged conduct by Mr. Crimmins which is referred to by the "concerted activities" language. Also set forth the published rule, regulation or interpretation which prohibits such "concerted activities".

44. With reference to the valuations of FSN stock in October, 1969, appearing at pages 4 and 5 of the Charges, state the reason for using that date as a point of comparison.

45. Does the Exchange claim that Mr. Crimmins engaged in some prohibited conduct exclusively or specifically in that month so as to make that month an appropriate point of comparison? If so, detail such conduct.

Charge 2

46. Does the Exchange claim that Frank J. Crimmins intentionally misstated facts to representatives of the Exchange? If so, set forth the basis for that belief.

47. Did the Exchange advise Mr. Crimmins in advance of his November 25, 1969 testimony before representatives of the Exchange that he should be prepared to testify as to the extent of his indebtedness? If so, set forth a complete and true copy of such advice and state how much notice was given.

48. Did the Exchange advise Mr. Crimmins in advance of his November 25, 1969 testimony before representatives of the Exchange that he should be prepared to testify as to any topic? If so, specify the topic, set forth a copy of such notice or advice and state how much notice was given.

49. Subsequent to November 25, 1969, did the Exchange receive letters and enclosures from Mr. Crimmins which

either explicitly or through simple calculation contained the amount of Mr. Crimmins' indebtedness on his FSN stock purchases? If so, set forth copies of such correspondence and enclosures.

50. Unless already done, set forth copies of two letters and enclosures from Mr. Crimmins to the Exchange dated December 2, 1969 and January 29, 1970.

51. Does the Exchange claim that such letters contained any misstatements of fact? If so, detail such claims.

52. Was the Exchange staff aware, when it charged Mr. Crimmins with misstating the amount of his indebtedness in testimony appearing at page 25 of his transcript, that at page 24 thereof Mr. Crimmins had agreed to provide the Exchange with the documentation on his FSN stock purchases?

53. Does the Exchange claim that Mr. Crimmins did not furnish it with such documentation?

54. When the Exchange staff offered to let Mr. Crimmins correct his testimony after looking at his records (Transcript page 162) was it intended at that time to accuse Mr. Crimmins of falsehood if he accepted the offer?

55. When did the Exchange decide to treat such corrections to the transcript as evidence of misstatements?

56. (a) Does the Exchange consider \$150,000 which Mr. Crimmins testified that he owed as of November 25, 1969 for his purchases of restricted FSN stock, to be a substantial debt?

(b) Does the Exchange consider the amount of the indebtedness to be a material point?

57. With respect to Charge 2 (ii), does the Exchange claim that the restricted FSN stock purchased by Mr. Crimmins was "admitted to dealings on the Exchange" within the meaning of the Exchange's Rule 5?

58. Does the Exchange claim that its Rule 5 applies to purchases of restricted stock? If so, set forth the published rule, regulation or interpretation which so states.

59. Produce the record of every proceeding in which the Exchange applied its Rule 5 to restricted stock.

60. Produce copies of all testimony and documents concerning the Exchange's Rule 5 given to the Securities and Exchange Commission in connection with its study of New York Stock Exchange Rule 394.

61. Does the Exchange claim that pursuant to Rule 5 it could legally have denied permission to Mr. Crimmins for his purchase of restricted FSN stock?

62. Does the Exchange claim that it could have required the restricted FSN stock in question to be sold over the Exchange?

Charge 3

63. With respect to Charge 3 and Mr. Crimmins' purchases of restricted FSN stock, name the person or persons claimed to be (a) the one(s) to have extended, maintained or arranged for credit, (b) the "creditor" and (c) the "customer," as such terms are used in Section 7(c) of the Securities Exchange Act of 1934 and Section 220.7(a) of Regulation T.

64. Does the Exchange claim that Section 220.7(a) of Regulation T applies to credit extended for purchases of restricted securities not involving the facilities of an exchange or a broker-dealer? If so, set forth the published rule regulation or interpretation which so states.

General

65. Set forth the names and present positions of those persons who prepared the Exchange's Report of Investigation dated March 1, 1971 ("Report").

66. When the Exchange received Walston's Response to the Report, did the Exchange attempt to

confirm or refute the claims contained in Walston's Response that the Report contained numerous factual errors? If so, state the alleged errors confirmed and those refuted and the source of information for each.

67. Set forth the names and present positions of those persons who prepared the Charges dated November 24, 1971.

68. Was the information contained in the Charges taken entirely from the Report? If any was not, list the new information and its source.

69. When the Exchange received Mr. Crimmins' Answer to the Charges, dated December 23, 1971, which contains references to numerous factual, statistical errors in the Report and Charges, did the Exchange attempt to confirm or refute the claimed errors?

70. Set forth those factual statements contained in the Report and asserted to be in error by the Crimmins Answer which the Exchange claims are not in error.

Produce

1. Copies of all correspondence and other communications between Walston and the Exchange with respect to FSN, its stock, the activities by Walston

personnel as to such stock or the Exchange's investigation and proceedings as to such stock.

2. Copies of all memoranda or other records of telephone conversations with Mr. Crimmins by any member of the Exchange's staff.

3. Copies of all exhibits intended to be introduced by the Exchange at the hearing of the Charges.

4. A list of all witnesses intended to be presented at the hearing by the Exchange, their addresses and telephone numbers.

5. Copies of all documents produced or delivered to the Exchange by any person or entity in connection with its investigation of FSN or in connection with this proceeding.

6. Copies of all documents relating to FSN or this proceeding produced or delivered by the Exchange to the Securities and Exchange Commission.

7. Copies of all documents relating to FSN or this proceeding produced or delivered by the Exchange to the office of any United States Attorney.

Dated: New York, New York
May 9, 1973

Yours etc.,

SPEAR and HILL
Counsel for Frank J. Crimmins
63 Wall Street
New York, New York 10005
Tel. No.: (212) 344-6200



American Stock Exchange

86 Trinity Place
New York NY 10006
212/964-3200

Norman S Poser
Vice President
Membership Compliance Division

June 17, 1969

Mr. William D. Fleming, President
Walston & Co., Inc.
74 Wall Street
New York, New York 10005

Dear Mr. Fleming:

We wish to bring to your attention the concern of the Exchange over certain aspects of your firm's activity in the common stock of Four Seasons Nursing Centers of America, Inc. ("Four Seasons") in view of your firm's relationship with this company.

On the basis of an inquiry which the Exchange has made into this matter, we understand that your firm acted as an underwriter in distributions of Four Seasons stock on two occasions during 1968 and that it acted as underwriter of securities of Four Seasons Equity Corp., an affiliate of Four Seasons, on one occasion in 1969. Furthermore, your firm has acted as financial advisor to Four Seasons and its affiliated companies and continues to act in that capacity. It is also our understanding that your firm and Montgomery Company, a partnership in which officers and stockholders of your firm have an interest, own a substantial number of shares of Four Seasons stock. Mr. Gordon McCollum, a vice president and voting stockholder of your firm, is a member of the Board of Directors of Four Seasons.

During the past few months your firm has been responsible for a substantial proportion of the overall market activity in Four Seasons stock on this Exchange. This activity is disclosed in the weekly and monthly reports of the Exchange's Clearing Corporation which are regularly sent to your firm. We have discussed this activity with representatives of your firm, including Mr. Alfred Rauschmann, formerly vice president in charge of compliance; Mr. James K. Nissan, vice president, nonvoting stockholder, and registered representative; and Mr. Frank J. Crimmins, vice president, voting stockholder, and manager of your branch office at 1290 Sixth Avenue, New

American Stock Exchange

Mr. William D. Fleming

- 2 -

June 17, 1969

York City. We understand that a substantial amount of the purchases which have been effected through your firm were solicited by registered representatives, including Messrs. Nissan and Crimmins.

It appears that while such solicitation was taking place your firm may have been in possession of material information concerning the company which was not available to the public or to stockholders of Four Seasons. Such an inference may be drawn not only from your firm's representation on the Board of Directors of Four Seasons but also from the relationship between Mr. Crimmins and Messrs. Jack L. Clark, president and Amos D. Bouse, vice president and secretary-treasurer of the company. Messrs. Clark and Bouse maintain personal brokerage accounts at Waiston & Co., which are serviced by Mr. Crimmins. Furthermore, in December 1968, Mr. Crimmins provided introductions for Mr. Clark to two institutions, Marine Midland Bank and Hemisphere Fund, for the purpose of placing first mortgage notes of F.S.N. Corporation, an affiliate of Four Seasons, with these institutions. Shortly thereafter, Mr. Crimmins, at the request of the management of Four Seasons, canvassed several of his customers as to whether they would favor a split of Four Seasons stock. A two-for-one stock split was announced on January 8, 1969. While Mr. Crimmins has denied to us that he had any advance information that the stock split would take place, his continued solicitation of purchase orders at a time when he knew that such a split was contemplated by the company poses problems of which we believe your firm should take cognizance.

We also wish to bring to your attention the fact that Mr. Nissan entered orders, which he had solicited, for the purchase of 800 shares of Four Seasons stock by the Foreign Bank of Commerce, a Swiss banking institution, on November 22, 1968, at a time when your firm was participating in a registered distribution of Four Seasons stock. This activity appears to raise questions of compliance with the anti-manipulative provisions of the Federal securities laws.

The concern which the Exchange feels about this situation relates not only to the question of whether there may have been violations of the securities laws and of the rules of the Exchange in connection with this

American Stock Exchange

Mr. William D. Fleming

- 2 -

June 17, 1969

situation but also whether your firm has adequate internal controls over solicitation of orders to purchase or sell securities of companies with which your firm has a relationship. Furthermore, we question the propriety of permitting solicitation at all in a situation such as that of Four Seasons, where the relationship is so close and where there are constant contacts between company management and your sales force. Accordingly, it is requested that you make a thorough investigation of this matter and furnish to the Exchange a written report not later than July 1, 1969 covering the following areas:

- (1) Please indicate whether there have been any violations of applicable provisions of Federal securities laws or of the Constitution and rules of the Exchange in connection with any of the matters discussed in this letter, and please state the factual basis for such conclusions. If there have been any such violations, please indicate what steps of a disciplinary nature have been taken against the persons involved.
- (2) Please describe the standards in effect at your firm which are designed to control solicitation of orders for the purchase or sale of securities of companies with which your firm has a relationship as underwriter or financial adviser, or where your firm has a representation on the Board of Directors. Please describe also, in detail, the supervisory procedures of your firm designed to enforce such standards. Among other things, it is requested that you give consideration to the development of internal controls which would insure that solicitation not be permitted where a possibility exists that nonpublic information may be employed, or where the company is participating in a distribution of the security.

Sincerely,

S. Power

NSP:ng

Walston & Co.

Inc

Members New York Stock Exchange and other
principal stock and commodity exchanges
Over 100 offices coast to coast and overseas

74 Wall Street / New York, New York 10005 / Cable Address WALSTONINC NY / Telephone 212 Digby 4-4141

June 30, 1969

OFFICE OF THE
PRESIDENT

Mr. Norman S. Poser, Vice President
Membership Compliance Division
American Stock Exchange
86 Trinity Place
New York, New York 10006

Dear Mr. Poser:

This is in reply to your letter of June 17, 1969 in which you mention the concern of the American Stock Exchange over certain aspects of our Firm's activity in the common stock of Four Seasons Nursing Centers of America, Inc. ("Four Seasons"), in view of as you state in your letter, our Firm's relationship with that company.

Your understanding is correct that our Firm was the managing underwriter for the initial public offering in May, 1968 of the common stock of Four Seasons and an offering of the common stock of Four Seasons in November, 1968. Likewise, our Firm was the managing underwriter of the common stock of Four Seasons Equity Corporation in February, 1969. The foregoing activities of our Firm, of course, were outlined in the Prospectuses filed with the Securities and Exchange Commission and are all a matter of public record. We attach hereto for your information copies of the Prospectuses of Four Seasons dated May 9, 1968 and November 26, 1968, respectively, and that of Four Seasons Equity Corporation dated February 27, 1969.

With respect to your statement that our Firm has acted as financial adviser to Four Seasons and its affiliated companies and that our Firm continues to act in that capacity, we wish to advise the Exchange that inasmuch as our Firm has acted as the investment banker for Four Seasons and Four Seasons Equity Corporation, it is perfectly normal for us to consult with Four Seasons from time to time about various means for financing its operations. However, our Firm has no contractual arrangements to act as the financial adviser to Four Seasons or any of its affiliated companies and we receive no fees in this connection whatsoever. As a matter of fact, Four Seasons uses the financial

Mr. Norman S. Poser

- 2 -

June 30, 1969

services of Equity Research Associates, Inc. and Argus Research Corporation, two financial firms, for specific financial advice.

Your understanding also is correct that our Firm and Montgomery Company, a partnership in which officers and stockholders of our Firm have an interest, own a substantial number of shares of Four Seasons stock. In this connection, we wish to point out that this ownership is reflected in the aforementioned Prospectuses filed with the Securities and Exchange Commission, and these facts, again, are a matter of public record. Similarly, your statement that Mr. Gordon McCollum, a Vice President and voting stockholder of our Firm, is a member of the Board of Directors of Four Seasons is correct and this is pointed out in the enclosed Prospectuses as well as in Four Seasons' listing application filed with the American Stock Exchange.

One of the principal reasons for our interest in Four Seasons stock is due to the fact that the proposed Four Seasons Equity Corporation financing was outlined on Page 10 of the final prospectus dated November 26, 1968. The disclosure of the potential availability of capital funds for the construction of additional nursing homes as a result of the proposed offering of Four Seasons Equity interested our Account Executives of the soundness and the investment potential of this stock. The activity in Four Seasons stock by this Firm, we feel, has been a direct result of the interest generated in this stock by the attraction of its investment value and the awareness of the company generated by our relationship as an investment banker to Four Seasons. The solicitation of purchases in a stock which our Account Executives feel to be attractive, based on information readily available to the public is not, in our opinion, an undesirable situation. In this regard, at least one other brokerage firm, Merrill-Lynch, Pierce, Fenner & Smith, Incorporated, has recommended Four Seasons. We are enclosing a copy of a booklet containing this recommendation by Merrill-Lynch. In view of the fact that Messrs. Nissan and Crimmins are two of this Firm's largest producers, we do not consider their activity in Four Seasons at all unusual under the circumstances.

You state that it appears that while registered representatives of our Firm were soliciting purchases of Four Seasons stock, our Firm may have been in possession of material information concerning the company which was not available to the public or to stockholders of Four Seasons. You also state that such an inference may be drawn not only from our Firm's representation on the Board of Directors of Four Seasons, but also from the relationship between Mr. Crimmins and Mr. Jack L. Clark, President, and Mr. Amos D. Bouse, Vice President and

Mr. Norman S. Poser

- 3 -

June 30, 1969

Secretary-Treasurer of Four Seasons. We wish to inform the American Stock Exchange that all material information concerning Four Seasons known to our Firm was information which was also available to the public and to stockholders of Four Seasons, and we must take exception to your statement that an inference may be drawn that this Firm may have been in possession of material information because of the factors stated by you. Such a conclusion is not warranted as a matter of law or of logic.

Your statement that Messrs. Jack L. Clark and Amos D. Bouse maintain personal brokerage accounts with our Firm which are serviced by Mr. Crimmins is correct, as is your statement that in December, 1968, Mr. Crimmins introduced Mr. Clark to the Marine Midland Bank and the Hemisphere Fund, for the purpose of placing first mortgage notes of F.S.N. Corporation, an affiliate of Four Seasons, with these institutions. It is our contention that there is no impropriety whatsoever either as a matter of law or under the rules of the American Stock Exchange or the New York Stock Exchange in Mr. Crimmins maintaining brokerage accounts for officers of Four Seasons. As we have mentioned to you previously, Mr. Crimmins is a highly knowledgeable Account Executive and services these two accounts in the same fashion as he services those of his many other clients. We also maintain the fact that Mr. Crimmins introduced Mr. Clark to Marine Midland Bank and Hemisphere Fund was totally appropriate and is nothing more than what any respectable Account Executive would do for a valuable client.

Mr. Crimmins' position with respect to the canvassing of several of his clients regarding a possible split of Four Seasons stock has already been conveyed to the Exchange during a meeting with Mr. Bernard Zucker, as well as in a letter of May 19, 1969 to Mr. Zucker. We attach a copy of that letter for your information. As you can see from the attached letter, Mr. Crimmins contacted three of his clients on this matter in early December, 1968. A review of our records indicates that during December, 1968, Mr. Crimmins sold on behalf of his clients 2,450 shares of Four Seasons and purchased 2,706 shares for clients. In January, 1969, he purchased for his clients 22,812 shares of which 18,862 shares were purchased after the announcement of the stock split by the company. During that month he sold 7,800 shares for clients. We submit on the basis of these figures, it is obvious that Mr. Crimmins was not acting on the basis of any so-called inside information.

The information which you have concerning Mr. Nissan's purchase of 800 shares of Four Seasons stock for the Foreign Bank of Commerce

Mr. Norman S. Foser

- 4 -

June 30, 1969

appears to be incorrect, as a review of Mr. Nissan's records shows no such transaction. Our records show that the Foreign Bank of Commerce purchased 2,500 shares of Four Seasons on the offering and an additional 2,500 shares in the open market the following day. The open market purchase was due to the fact that the Foreign Bank of Commerce was unable to get the total number of shares they desired on the offering. We submit that no violation of Rule 10(b)-5 is involved in this transaction.

We wish to advise the Exchange that our Firm has continuously reviewed the trading activity in Four Seasons common stock because of our underwriter obligations to this company. All of our conduct has been in conformity with established policies of this Firm as reflected in Compliance Bulletins Nos. 21, 38 and 39 attached, which are in accordance with the provisions of the Federal security laws and the Rules and Regulations of the Securities and Exchange Commission, and it is our contention that we have not violated any such laws. Further, this Firm has adequate internal control with respect to our trade activity as our Compliance Division reviews daily such activity. We also must state that we feel that there is no impropriety whatsoever with respect to the solicitation of orders on behalf of clients for securities which this Firm has underwritten and we know of no rule of law or that of any regulatory agency, including the American Stock Exchange, which prohibits our doing so.

At your suggestion we have made a thorough investigation of the matter raised in your letter of June 17, and we find that there has been no violation of any provision of the Federal Securities Law or of the Constitution and Rules of the American Stock Exchange for the reason that our trading activity in the common stock of Four Seasons has been in accordance with established policies of this Firm and none of our personnel, noted in your letter of June 17, has been privy to or acted on the basis of any so-called inside information.

We again bring your attention to Compliance Bulletins Nos. 21, 38 and 39 attached, which describe the present standards in effect to control the improper solicitation of trade orders, as well as proposed guidelines to be issued by this Firm to all personnel concerning the prohibition of the use of inside information. These guidelines have been in the process of preparation by our Firm since January of this year, and are due primarily to the recent action taken by the Securities and Exchange Commission against Merrill-Lynch, Pierce, Fenner &

Mr. Norman S. Poser

- 5 -

June 30, 1969

Smith, Incorporated. Appropriate departments of this Firm have worked on and have been responsible for the preparation of these guidelines which are soon to be released.

In conclusion, our Firm takes pride, and we think justifiably so, that an issue such as Four Seasons with which we have been so closely identified and with regard to which we have emphasized the attractive investment potentialities to our customers has done so well, particularly when the information with respect to such company was in the public domain.

Very truly yours,

WALSTON & CO., INC.

William D. Fleming
President

WDF/lt
Enclosures
As above

cc: Mr. Ralph S. Saul, President
American Stock Exchange

American Stock Exchange

86 Trinity Place
New York NY 10006
212/964-3200

Norman S Poser
Vice President
Membership Compliance Division

August 20, 1969

Mr. William D. Fleming, President
Walston & Company, Inc.
74 Wall Street
New York, New York 10005

Dear Mr. Fleming:

This is with further reference to your letter of June 30, 1969 concerning your firm's market activity in the stock of Four Seasons Nursing Centers of America, Inc. ("Four Seasons").

On the basis of our review of your letter and other relevant documents, it is our feeling that there may be a misunderstanding of our letter of June 17 concerning this matter. You may recall that in the June 17 letter we referred to the relationship between your firm and Four Seasons and questioned the propriety of large-scale solicitation of purchase orders in this stock, in view of the closeness of the relationship, the direct contacts which there have been between Four Seasons' management and your sales force, and the apparent lack of internal controls with respect to solicitation at your firm.

In your reply you indicated, among other things, that the relationship between your firm and Four Seasons is a matter of public record and that the solicitation of purchase orders was based on the investment value of Four Seasons and was not improper. Furthermore, you stated that Mr. Frank Crimmins, the account executive who canvassed certain of his customers on behalf of Four Seasons management in connection with a proposed stock split, did not solicit orders on the basis of inside information.

American Stock Exchange

Mr. William D. Fleming

- 2 -

August 20, 1969

The Exchange does not intend to imply that there is any impropriety in the existence of a close relationship between your firm and Four Seasons. Its concern is rather with the absence of proper controls, in view of this relationship, to ensure that any solicitation is based solely upon information which is in the public domain, and with the ability of your firm to meet its responsibilities as a member organization of this Exchange.

It is apparent, in view of Mr. Gordon H. McCollum's position as a director of Four Seasons, Mr. Crimmins' close association with the management of Four Seasons, and your firm's position as underwriter and financial advisor to Four Seasons, that your firm and certain of its account executives must, from time to time, be in possession of material information concerning Four Seasons which has not yet been made available to the public. While we understand, on the basis of the Compliance Bulletins of your firm which you have sent to us, that it is the policy of your firm not to permit the misuse of inside information, it is not clear that your firm has adequate procedures to enforce this policy.

Your firm, as a member organization of the Exchange, and its top management are obligated to establish and maintain in effect supervisory procedures to ensure full compliance with all applicable rules and regulations. It is not uncommon for a member organization to maintain procedures which have the effect of insulating the underwriting department from the sales department, for the purpose of ensuring that there is no misuse of non-public information concerning companies with which the firm has an underwriting relationship. In view of the direct contacts which take place between members of your sales force and Four Seasons management, it does not appear that any such insulation exists at your firm. Furthermore, many firms impose tight controls, such as requiring the prior approval of a senior supervisory official, upon all transactions in securities or companies with whom such a relationship exists. We are not aware of such controls at your firm. While we respect the opinion which you express in your letter that no use of inside information concerning Four Seasons has been made by members of your sales force, we think that the situation at your firm creates a danger that such abuses could occur.

American Stock Exchange

Mr. William D. Fleming

- 3 -

August 20, 1969

It is therefore requested that you take appropriate steps of a supervisory and procedural nature to ensure that no misuse is made of material information concerning companies with which you have a relationship as underwriter or financial advisor, or upon whose board of directors your firm is represented; and that you inform the Exchange of the action which you have taken.

We would appreciate receiving a reply by September 5, 1969. If you wish to have any further clarification of the views of the Exchange in this matter, I will be happy to meet with you at a mutually convenient time.

Sincerely

S. Poser
Norman

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM

WASHINGTON, D. C. 20551



ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

April 24, 1972

Gordon L. Nash, Esq.,
Forsythe, McGovern, Pearson & Nash,
345 Park Avenue
New York, New York. 10022

Dear Mr. Nash:

This refers to your letter of November 23, 1971, in which you ask, on behalf of your client, the American Stock Exchange (AMEX), for an opinion whether the Board of Governors' Regulation T, "Credit by Brokers and Dealers", would prohibit an officer of a brokerage firm from purchasing margin stock on instalments from 3 officers of the issuing corporation, a client of his firm, under the circumstances described below. For the reasons discussed herein, the Board believes the answer should be in the affirmative.

In your letter you state that in November 1968, an officer of a brokerage firm bought 10,000 shares of margin stock from three private individuals (all three are officers of a corporation for which the brokerage firm acted as underwriter) at \$35 per share, at a total cost of \$350,000. The market value of the purchased stock was then about \$500,000. The maximum loan value of stock under the current Supplement to the regulation was 20 per cent. The stock became registered on the AMEX shortly before the agreement was executed.

The agreement between sellers and buyer provided that the buyer was to pay \$175,000 (representing 1/2 of the purchase price) about 1 month after the date of such agreement, and the remainder 6 months later. Accordingly, the sellers extended credit to the buyer in excess of the maximum loan value of the purchased stock.

Although the buyer maintained a securities account with his employer (the brokerage firm), the above-described purchase was not effected in that account, nor did the buyer inform his employer of this purchase. However, you stated orally to the Board's staff on February 1, 1972, your understanding that the brokerage firm subsequently consented to the acts of its officer.

A second purchase for another 10,000 shares at \$30, also on credit terms, was agreed to between the same parties in March 1969.

Throughout the period in which the above transactions took place, the buyer's brokerage firm was the principal investment banker, underwriter and financial adviser to the corporation of the sellers, having underwritten two of its public offerings in May and November 1968. The buyer was also instrumental in maintaining the investment banking and financial adviser relationship between the brokerage firm and the corporation of the sellers.

Section 220.7(a) provides, with an exception not applicable here, that

"A creditor may arrange for the extension or maintenance of credit to or for any customer of such creditor by any person upon the same terms and conditions as those upon which the creditor, under the provisions of this part, may himself extend or maintain such credit to such customer, but only upon such terms and conditions . . ."

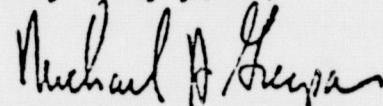
Since a creditor (broker or dealer) may not extend credit to purchase or carry securities in excess of the maximum loan value of the collateral under the current Supplement to the regulation, he may not arrange for credit to be extended in excess of such amount.

The same individual may, under appropriate circumstances, function as both creditor and customer. In an early interpretation, (1938 Federal Reserve Bulletin 763), the Board pointed out that an individual who is a partner of an exchange member firm is himself a "creditor" under section 3(a) of the Securities Exchange Act of 1934 "as incorporated in Regulation T". If the officer described in your letter occupies a position such that he would have been a partner, had the firm not been incorporated, it would follow that he arranged, as "creditor", for credit to be extended to himself, as "customer", to purchase or carry a margin stock, in excess of the maximum loan value of the collateral for the credit, in violation of section 220.7(a) of the regulation.

Alternatively, under the facts summarized above, he may be considered to have functioned as both customer and representative of his brokerage firm (see opinion by the SEC, In the Matter of Sutro Bros, & Co., 41 SEC 443 (1963)). It would follow that as representative of the firm, he arranged for credit to be extended to himself as customer, resulting in a violation of section 220.7(a) on the part of the firm.

Additionally, to the extent that the firm knew of the violation or ratified it, the firm was itself directly responsible. As a representative of the firm, the officer would also himself be liable, under this view, for aiding and abetting such violation.

Very truly yours,


Michael A. Greenspan,
Assistant Secretary.



American Stock Exchange Inc.

86 Trinity Place
New York NY 10006
212/938-6000

BY HAND

CONFIDENTIAL

August 27, 1973

Mr. Frank J. Crimmins
24 Chesterfield Road
Scarsdale, New York 10583

Dear Mr. Crimmins:

This will confirm the advice which Mr. Benjamin D. Krause, the Panel Assistant, gave to your counsel over the telephone on August 24 regarding the unanimous decision of the Exchange Disciplinary Panel on the Charges dated November 24, 1971 which were preferred against you by the Exchange pursuant to its Rule 345. This decision was reached after careful review and consideration of your testimony and that of witnesses called by you and the documentary evidence presented at hearings conducted on July 9, 18, and 25, 1973, and of the post-hearing memoranda submitted by counsel for you and the Exchange.

On the basis of the facts and circumstances disclosed in the record, the Panel found you guilty of engaging in conduct or proceeding inconsistent with just and equitable principles of trade as alleged in Charges 1 and 3, and of committing an act detrimental to the interest or welfare of the Exchange as specified in paragraph (i) of Charge 2. The Panel further found that you were not guilty of the violation alleged in paragraph (ii) of Charge 2.

Because of the serious nature of the violations proved, the Panel determined as a penalty that (i) for a period of nine (9) months, you should be barred from employment in any capacity with any member or member organization of the Exchange; and (ii) for a period of fifteen (15) months thereafter, you should not be employed by any member or member organization of the Exchange in a managerial or supervisory capacity. This penalty will commence upon the date on which the Panel's decision becomes final in accordance with the applicable provisions of the Exchange's Constitution.

August 27, 1973

The record before the Panel established that the acts of wrongdoing upon which the Charges were based occurred during a period when you were an Allied Member of the Exchange, and an officer, voting stockholder and manager of a branch office of Walston & Co., Inc. ("Walston"). The Panel found that despite the duties and obligations you assumed in occupying these positions of responsibility, you failed to meet the standards demanded by the Exchange of its members and their employees of business conduct and fair dealing which you owed to the customers of Walston, the investing public and the Exchange.

Of significance to the Panel in finding you guilty of Charge 1 was the position in which you placed yourself through the relationships which you had developed and maintained with the management of Four Seasons Nursing Centers of America, Inc. (FSN), including your purchase of 30,000 shares of FSN common stock from its three principal officers upon unusually favorable terms which resulted in your becoming heavily indebted to such officers. These relationships placed you in direct conflict with your customers and the investing public who were entitled to full disclosure of your interests.

As part of your course of conduct and the pattern of circumstances upon which Charge 1 was based, the Panel also took account of the evidence disclosing extensive trading activity in the common stock of FSN for your customers particularly in the period prior to a public announcement by FSN of a new franchising program on April 7, 1969. While you denied both having or using material non-public information concerning this program prior to FSN's public announcement, the evidence before the Panel showed that your close and continuing business and social relationship with officers of FSN and their associates placed you in a position to know that FSN intended to establish the program. In view of this, you were under an obligation not to discuss the merits of either purchasing or selling FSN stock with any customer or potential customer of Walston until the public release of this information.

Where a member of the Exchange establishes a relationship with a company whose securities are listed for trading on the Exchange, both the member and its employees undertake obligations, consistent with well established business and ethical principles governing the conduct of Exchange members, not to take advantage of such a relationship and to avoid actual or potential conflicts of interest. The Panel concluded from the record that you did not live up to this obligation and further that in your relationships with the management of FSN and in your efforts to enhance your own financial interests, you exhibited conduct clearly inconsistent with just and equitable principles of trade as alleged in Charge 1.

Mr. Frank J. Crimmins

August 27, 1973

Paragraph (1) of Charge 2 alleged that in testifying before representatives of the Exchange on November 25, 1969, you made a misstatement about a material point concerning the extent of your personal indebtedness to the three principal officers of FSN. While the Panel considered your subsequent correction of this testimony, it concluded that your earlier testimony to the Exchange's representatives was grossly misleading and clearly constituted a misstatement as to a material point during the course of the Exchange's investigation. The Panel believes that it is absolutely essential to the Exchange's self-regulatory process that every member and employee of a member organization give information promptly and accurately when called upon to do so by an authorized Exchange representative. Without this, the Exchange cannot discharge its statutory obligation to ensure fair dealing and protect public investors.

In finding that you willfully caused a violation of Section 220.7(a) of Regulation T as alleged in Charge 3, the Panel considered carefully the argument advanced by your counsel and the testimony of Mr. Rauschman. The Panel concluded, however, that the weight of the evidence presented by the Exchange, including the credit arrangements in connection with your purchase of 30,000 shares of FSN common stock, established the violation charged.

As you are aware, Section 1(b) of Article V of the Exchange Constitution provides that the Panel's decision and penalty determination shall not become final and conclusive until the expiration of twenty days following notification to the accused and that either the accused or any four members of the Board of Governors of the Exchange may seek review of such decision and determination by making a written request to the Secretary of the Exchange. In this instance, however, Exchange counsel has advised the Panel that under an order of the United States District Court for the Southern District of New York signed by Federal Judge Morris E. Lasker on August 3, 1973, the Panel is prevented for the time being from notifying any person other than you and counsel for the Exchange. Although the Panel's decision and penalty determination will not be submitted to each member of the Board of Governors of the Exchange until such time as the Court permits, Judge Lasker's order provides that your twenty-day period to petition for a review of the Panel's decision commences on the date on which you receive notification of such decision.

You are further advised that under Rule 13 of the Rules of Procedure Applicable to Exchange Disciplinary Proceedings, the Exchange is required

Mr. Frank J. Crimmins

August 27, 1973

to publicly announce the results of all disciplinary proceedings, including the basis for such determination and the penalty imposed or other action taken, unless the Panel determines that the offense relates solely to minor administrative requirements of the Exchange and does not materially affect the public interest or the interest of investors. Since no such determination was made in this instance, the Exchange is required to publicize the Panel's decision in this proceeding following the expiration of the period for review or the resolution of such review if one be taken. In view of the aforementioned order of Judge Lasker, the Panel has directed that its decision not be made public until such order has been dissolved or modified, or when the Panel's determination becomes final in accordance with the applicable provisions of the Exchange Constitution, whichever is later.

Very truly yours,



Thomas W. Rae, Jr.
Panel Chairman

cc: Donald Stuart Bab, Esq.
Messrs. Spear and Hill

Burton L. Knapp, Esq.

The original of this letter was received by me on August 27, 1973
on behalf of Mr. Crimmins.

Messrs. Spear & Hill
Counsel for Frank J. Crimmins

by Donald Stuart Bab

FORM OS-1
JANUARY 2, 1963

American Stock Exchange

Office Procedures Division

APPLICATION FOR REGISTRATION OF EMPLOYEE

This page to be filled in by applicant member, firm or corporation
PLEASE TYPEWRITE INFORMATION

Complete and accurate answers to the questions herein will expedite
Exchange action on this application.

1. <u>CRAHNS</u>	<u>Frank</u>	<u>Joseph</u>	2. <u>Registered Representative</u>
Last Name	First Name	Middle Name	Title or Position
3. <u>Walston & Co., Inc.</u>	To be Employed by		4. <u>✓ 74 Wall St., New York, N. Y.</u>
			Where to be Employed—Give Location of Office
5. (a)* <u>Soliciting of commission business and sale of unlisted securities.</u>			
Nature of Duties			
(b) Type of Registration Desired — Limited <input type="checkbox"/> Full <input checked="" type="checkbox"/> (check one)			
(c) <u>February 2, 1965</u>			
Starting Date of Employment			
(d)* <u>Salary _____ per Month or (and) Commission as permitted by the rules of your Year</u>			
Week			
(e) If candidate is to have any percentage participation in (1) firm profits, (2) corporation profits (3) branch office profits or (4) departmental profits, give details _____			
(f) Is the member, member firm or member corporation making this application also a member of the New York Stock Exchange? Yes <u> </u> No <u> </u>			
(g) If answer to (f) is yes, has application been made to the New York Stock Exchange for registration of this employee? Yes <u> </u> No <u> </u>			
(h) If application has been made to the New York Stock Exchange, has registration been approved by that Exchange? Yes <u>X</u> No <u> </u>			

Notes: (a) If the applicant is a member of the New York Stock Exchange and application for registration of this employee has been made to that Exchange, this American Stock Exchange application should not be filed until registration approval has been received from the New York Stock Exchange.

(b) Items marked "*" need not be answered if this application involves an immediate transfer of a fully registered representative from another ASE member employer, provided such employment was not terminated "for cause."

Have you taken the NASD examination for registration? YES NO

If "Yes" on what date? _____

DATE APPROVED 2/11/65
REGISTERED REPRESENTATIVE SECTION 2 1965
OFFICE PROCEDURES DIVISION

By _____

TO BE COMPLETED BY PROPOSED REGISTERED REPRESENTATIVE

6.	CRIMINAL	Frank	Joseph	7.	7-10-1947
	Last Name	First Name	Middle Name		Soc. Sec. No.
8.	24 Chesterfield Road,		Scarsdale,		N. Y.
	Home Address	Street	City	State	
9.	(a) Sept. 20, 1922	(b)*	25	10.*	Male
	Date of Birth		Age		Male or Female
11.	New York,		N. Y.	U.S.A.	
	Place of Birth	City	State	Country	
12. (a)	Married		(b)	If married, maiden name or maiden name of spouse	
	Marital Status				

13.* Educational Institutions attended:

14* List associations, societies or fraternal organizations to which you belong. (Names and Addresses)

15. (a) The following is a complete, consecutive statement of my business history for the past ten years:

All time must be accounted for—include all self-employment, showing name or trade style under which, and all addresses at which, you conducted business, and show all residence addresses during periods of unemployment. If presently employed by applicant member in any capacity, give starting date of such employment and position held. (If a "transferee," list only business connections since last application filed with Exchange.)

Important: If candidate has served with the armed forces within the last 10 years, give dates, branch of service, rank or rate, identification number (if any) and type of discharge.

LIST LATEST POSITION FIRST

If more space is needed attach separate sheet
DO NOT WRITE IN THIS SPACE

U. S. A.

(b) *I am a citizen of.....

(If naturalized citizen of U. S. A., give date, name of court and certificate number. If not a citizen of U. S. A., give place and date of entry into U. S. A.)

(c) *I can read, write and speak English fluently.

THE TEN YEAR LIMIT DOES NOT APPLY TO THE
FOLLOWING ITEMS THROUGH NO. 28

16. (a) Have you ever been registered as a representative of a member of the N.A.S.D. Yes No
(b) Are you presently employed by a member of the N.A.S.D. other than the present sponsor? Yes No
If "yes", give name, address and position held.....

(c) Are you at present engaged in any other business, either as a proprietor, partner, officer, director, trustee or employee or otherwise? Yes No
If "yes", give details, including name and address, your title or capacity, nature of business, duties, compensation received, time spent, etc. - ~~Harlan Liquor Shop, Inc. 174 St. Nicholas Ave., N.Y.C. - Treasurer~~
-No compensation.
(d) Do you currently hold an insurance or real estate license? Yes No
If "yes", give details, including states where licensed.....
17. *I am at present employed by:
...Halston & Co., Inc., 7th Floor, St. & W. 42nd St., N.Y.C., Feb. 2, 1965.
(Name of employer, business address and starting date of such employment)
18. *I have been bonded by (specify bonding company, amount, and whether currently in effect) ...Aetna Casualty & Surety Co., 151 William St., N.Y.C.
19. (a) Have you ever been refused a bond by a surety company? Yes No
(b) Has any surety company paid out any funds on your coverage? Yes No
If answer to either (a) or (b) is "yes", attach details.
20. (a) Have you ever been a member of any stock exchange, commodity exchange, or registered association of security or commodity brokers, dealers, investment bankers or investment advisors? Yes No
If "yes", give name(s) and dates.
(b) Are you at present a member of any such exchange or registered association? Yes No
If "yes", give name(s).
21. (a) Have you ever been suspended, expelled or otherwise disciplined by any regulatory body or by any such exchange or association; or ever been refused membership therein; or ever withdrawn your application for such membership? Yes No
(b) Have you ever been associated with any organization, as a director, controlling stockholder, partner, officer, employee or other representative of a broker-dealer which has been, or a principal of which has been, suspended or expelled from any such exchange or registered association, or was refused membership therein, or withdrew an application for membership; or whose registration as a broker-dealer with the S.E.C. or any State or agency has been denied, suspended or revoked? Yes No
(c) Are you now subject to an order of the N.A.S.D., any national securities exchange or S.E.C. which revokes, suspends or denies membership or registration? Yes No
(d) Have you ever been named as a "cause" in any action mentioned in the preceding questions taken with respect to a broker-dealer? Yes No
(e) Have you ever been enjoined, temporarily or otherwise from selling or dealing in securities or commodities or from functioning as an investment advisor? Yes No
(f) Have you ever been a principal or employee of any corporation, firm, or association which was enjoined temporarily or otherwise from selling or dealing in securities or commodities or from functioning as an investment advisor? Yes No
22. If answers to questions 21 (a), (b), (c), (d), (e) or (f) is "yes", supply following information:
Nature of such action: Revocation Expulsion
Suspension Injunction Other

30. I hereby certify that the foregoing statements are true and complete. In consideration of the American Stock Exchange's receiving and entertaining my application

(1) I authorize and request any and all of my former employers and any other person to furnish to the American Stock Exchange any information they may have concerning my character, ability, business activities and reputation, together with, in the case of former employers, a history of my employment by them and the reasons for the termination thereof; and I hereby release each such employer and each such other person from any and all liability of whatsoever nature by reason of furnishing such information to the American Stock Exchange.

(2) I authorize the American Stock Exchange to make available to any prospective employer, or to any Federal, State or Municipal agency, any information it may have concerning me, and I hereby release the American Stock Exchange from any and all liability of whatsoever nature by reason of furnishing such information.

(3) I agree that the decision of the American Stock Exchange as to the results of any examinations it may require me to take will be accepted by me as final.

Further, and in consideration of the American Stock Exchange's approving this application, I submit myself to the jurisdiction of such Exchange, and I agree as follows:

(1) That I will not represent to any customer that I will personally guarantee the account of such customer.

(2) That I will not, either directly or indirectly, lead any customer to believe that he will not suffer any loss as the result of opening an account with my employer, or as the result of any dealings in connection therewith.

(3) That I will not, directly or indirectly, take or receive a share in the profits of any customer's account.

(4) That I will not effect a transaction or have an account in securities or commodities without the prior consent of my employer.

(5) That I will not, directly or indirectly, rebate to any person, firm or corporation any part of the compensation I receive as a registered employee, and I will not pay such compensation, or any part thereof, directly or indirectly, to any person, firm or corporation, as a bonus, commission, fee or other consideration, for business sought or procured for me or any member of the Exchange or firm or corporation registered thereon.

(6) That at any time upon the request of the American Stock Exchange, I will appear before any Committee or Division of the Exchange and give evidence upon any subject under investigation by any such Committee or Division, and that I will upon the request of any such Committee or Division produce all of my records or documents relative to any inquiry being made by any such Committee or Division.

(7) I am familiar with the rules and regulations of the American Stock Exchange pertaining to the employment of registered employees, and I agree to abide by the existing rules and all amendments thereto.

(8) I understand that any changes in compensation in any form or additional compensation in any form may be subject to disapproval by any Committee or Division of the American Stock Exchange.

(9) I will notify the American Stock Exchange promptly if, during the tenure of my employment by the applicant firm or corporation herein named, I become involved in any litigation or if any judgments are found against me; or if my registration or license to sell or deal in securities or to function as an investment advisor is ever refused, suspended or revoked; or if I become involved temporarily or otherwise, from selling or dealing in securities or from functioning as an investment advisor, if I am arrested, summoned, arraigned or indicted for a criminal offense; or if I become involved in bankruptcy proceedings.

(10) I agree that my right of employment by a member, member firm or member corporation may be suspended or terminated by the Exchange at any time if, in the opinion of the Exchange, I have

(a) made any misstatements in this application or in any supplemental information given by me;

(b) violated any of my agreements contained herein or in any prior application;

(c) been guilty of conduct or proceeding inconsistent with just and equitable principles

or trade;

(d) been guilty of any act detrimental to the interest and welfare of the Exchange.

(11) I agree that any controversy between me and any member or member organization arising out of my employment or the termination of my employment by and with such member or member organization shall be settled by arbitration at the instance of any such party in accordance with the Constitution and Rules then obtaining of the American Stock Exchange or, if the employer be a member or member organization of the New York Stock Exchange, in accordance with the Constitution and Rules of that Exchange.

31. (Date) 2-19-61 H. W. Longwell

(Signature of Employee)

32. Witness H. W. Longwell

(Witness must be a partner of firm, officer of corporation or branch office manager. Please indicate which.)

H. W. Longwell, Vice President

33. To the best of my knowledge and belief the candidate is familiar with the Constitution and Rules of the American Stock Exchange and the rules governing registered representatives, and is fully qualified for the position for which application herein is made. I agree that notwithstanding the approval of the Exchange, which hereby is requested, I will not employ the candidate in the capacity stated herein without first receiving the approval of any State authority which may be required by law. I HAVE COMMUNICATED WITH THE LAST PREVIOUS EMPLOYER OF THE CANDIDATE. In addition, the following steps have been taken to verify the statements contained in this application form: (State whether by investigation at time of employment, commercial agency report, investigation by bonding company or other means. Such statement is necessary before this application can be considered by the Exchange).

XXXXXXXXXXXXXX

Contacted Warner G. Cosgrove, Jr. Partner of Shields & Co. to verify
that the record of Frank J. Crimmins was clear

34. (Date) 2-10-61 H. W. Longwell

(Individual signature of applicant member, general partner of applicant firm
or officer of applicant corporation.)

H. W. Longwell, Vice President

FRANK J. CRIMMINS

FORM OS-1

IN ANSWER TO QUESTION 27 XXXXXXXXXXXXXXXXXX

There is at present a mechanics lien placed against me by Cirillo Electric Co., Inc. filed on February 7, 1964 in the Office of the County Clerk, Westchester County, N. Y. The lien is in the amount of \$291.75 for additional work allegedly performed at my residence. This claim is currently being contested and a counter claim against Cirillo has been instituted in an amount in excess of the claimed lien.

see Cirillo Electric Co., Inc. vs. Frank J. Crimmins and Mrs. Crimmins, County Court, County of Westchester, index no. 7113/1964.

There is a judgment lien outstanding approximately in the amount of \$90.00 for gardening services allegedly performed at my premises. (Mr. Amodio)

FORM OS-1

IN ANSWER TO QUESTION 16 (d) XXXXXXXXXXXXXXXXX

I am an inactive officer (treasurer) in the Harlem Liquor Shop, Inc. located at 174 St. Nicholas Avenue, New York City.

This Corporation is family controlled and is a retail package liquor store.

Since I began my career in the securities industry, I have devoted no time and received no compensation.

FRANK J. CRIMMINS

21 (a) FORM OS-1

IN ANSWER TO QUESTION Xxxxxxxxxxxxxxx

A complaint was received by the NYSE from a Miss Vita Cleveland regarding an unauthorized transaction, which resulted in a verbal warning given to me on February 26, 1959. (Details on File)

June 4, 1962, resulting in a NYSE censure for violations of Regulation T in my personal account. (Details on File)

On February 6, 1964, I received a letter of caution from the NYSE for failure to conform to principles of rule 410 in neglecting to place account designations on several order tickets prior to their execution.

23 FORM OS-1

IN ANSWER TO QUESTION EEEEEECCCCCCCCCCCC

A complaint was received by the NYSE from a Miss Vita Cleveland regarding an unauthorized transaction, which resulted in a verbal warning given to me on February 26, 1959. (Details on File)

23 FORM OS-1

IN ANSWER TO QUESTION EEEEEECCCCCCCCCCCC

On May 4, 1964, a complaint was filed by a Miss Sedell G. Rand against Shields & Co. and myself. The complaint was answered by the firm and myself on June 26, 1964. A hearing was requested by the complainant and was held on January 6, 1965 before a Subcommittee of the District Business Conduct Committee of the National Association of Securities Dealers, Inc. This Subcommittee after reviewing the case dismissed all charges against Shields & Co. and myself in their reported findings dated January 22, 1965. (Copy attached)

On January 28, 1965, Mr. Lloyd J. Derrickson, Associate General Counsel, acknowledged receipt of another letter by Miss Rand which constituted an appeal to the Board of Governors. In her letter, Miss Rand indicated that she believes that the findings handed down by the District Business Conduct Committee were prejudicial and biased.

FRANK J. CRIMMINS

IN ANSWER TO QUESTION 21 (a) OS-1 FORM

An application was submitted by Shields & Co. to the NYSE on my behalf for partnership in the firm in October, 1961. No action was taken on the application, however, pending the completion of certain NYSE investigations.

February 2, 1965

Miss Sedell G. Rand
30 East 42nd Street
New York, New York 10017

Re: Complaint No. NY-916 - District No. 12
Sedell G. Rand Vs. Shields & Company, et al

Dear Miss Rand:

This will acknowledge receipt of your letter of January 23, 1965, which will constitute an appeal to the Board of Governors in connection with the above captioned matter pursuant to the provisions of Section 14 of the Association's Code of Procedure for Handling Trade Practice Complaints.

In connection with such an appeal, all parties to this complaint will be afforded an opportunity to be heard before a Subcommittee of the Board of Governors. I would appreciate learning how much time you believe will be required to present your argument. I would also appreciate being advised whether you expect to introduce new evidence and, if so, the nature of such evidence. After receipt of this information, a definite time and place will be set for a hearing before a Subcommittee of the Board.

Your letter indicates that you believe the findings were prejudicial and biased and you ask what cooperation you may expect in connection with this matter. Since I am not in a position to know what your contentions are, I can express no opinion on them.

You may express your views in respect to the handling of this matter as well as your views on the merits to the Subcommittee of the Board of Governors which, it is expected will be convened in New York in the near future.

Miss Sedell G. Rand
February 2, 1965
Page Two

Should you have any further questions, please advise me.

Very truly yours,

Lloyd J. Derrickson
Associate General Counsel

cc: Shields & Company
Mr. Frank J. Crimmins
Leonard B. Lechner, Esq. ✓

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.
DISTRICT BUSINESS CONDUCT COMMITTEE
FOR DISTRICT NO. 12
COMPLAINT NO. NY-916

Sedell G. Rand
60 East 42nd Street
New York, New York

Complainant

vs.

Shields & Company, Member
44 Wall Street
New York, New York

DECISION

DATED: January 22, 1965

and

Frank J. Crimmins, Registered Representative

Respondents

The complaint in this matter was filed under date of May 4, 1964 and answered by the respondent firm and individually-named respondent under date of June 26, 1964. A hearing was requested by the complainant and held on January 6, 1965 before a Subcommittee of the District Business Conduct Committee. Miss Sedell Rand, the complainant, appeared on her own behalf and Mr. Macrae Sykes appeared on behalf of the respondent firm. Mr. Frank J. Crimmins, the individually-named respondent appeared on his own behalf.

Upon review and consideration at an assembled meeting, the District Business Conduct Committee finds and determines as follows:

THE COMPLAINT

The complainant, Miss Sedell Rand, alleges violations of Sections 1 and 2 of Article III of the Rules of Fair Practice in that the respondent firm, Shields & Company and Mr. Frank J. Crimmins, the individually-named respondent, recommended the sale of one security and the purchase of another, which recommendations were not suitable considering the relevant circumstances. More specifically, the complainant alleges that in early 1961 Mr. Crimmins, a co-manager in the respondent firm's Fifth Avenue branch office recommended the purchase of 200 shares of Pocket Books, Inc., 100 shares for her account and an additional 100 shares for the account of her mother, both at approximately \$39.50 per share. In order to pay for the purchase of these shares, the firm,

through its registered representative, Mr. Crimmins, recommended the sale of 41 shares of Eastman Kodak in the complainant's account and 41 shares of the same security in her mother's account. The allegations in the complaint charge that the recommendations of sale of Eastman Kodak at approximately \$110. per share, and the purchase of Pocket Books, Inc. were not suitable, considering the nature and size of the financial resources of the respective customers and their investment objectives. Additionally, the complainant charges that neither the respondent firm nor Mr. Crimmins adequately advised her of the gradual deterioration in the price of Pocket Books, Inc. in the years after its purchase, and subsequently, incorrectly advised her to purchase additional shares to average down the losses.

Miss Rand also alleges a violation of Article III, Section 1 in that the respondent firm failed to allocate to her account certain shares of Alberto-Culver Co., a new issue, sometime in May 1961. She states that 100 shares of this new issue were to be reserved for her account after its effective registration. Subsequently however, notwithstanding her request, no shares of the stock were ever allocated to her account.

THE ANSWER

The answer submitted by the individually-named respondent and respondent firm admits certain of the factual allegations with regard to the execution of the transactions involved but denies any violations of the Rules of Fair Practice as charged and respectfully requests that all charges be dismissed.

FACTS, FINDINGS AND CONCLUSIONS

Our review of the record indicates that in December 1959 the complainant, Miss Sedell G. Rand and her mother opened their respective accounts at the respondent firm. The accounts had been transferred to Shields & Company because Miss Rand had been dissatisfied with the firm responsible for the accounts previously. The individually-named respondent, Mr. Crimmins, had been recommended to Miss Rand and it was her intention to have him service her account at the Fifth Avenue branch office of the respondent firm. Due to certain managerial functions exercised by Mr. Crimmins at that office, certain other registered representatives at the branch office were primarily responsible for the transactions in Miss Rand's account and earned all commissions from said transactions. Mr. Crimmins however, did supervise the securities transactions and did have periodic conversations with the complainant.

In early 1961 after certain discussions relating to the securities contained in the two accounts, and the intention of the complainant to trade for the purpose of securing long-term capital gains, the firm, through Mr. Crimmins and the other registered representatives, recommended that the complainant and her mother purchase 100 shares each of Pocket Books, Inc. at approximately \$39.50 per share. It was recommended that in order to pay for the purchases

that 41 shares of Eastman Kodak in each account should be sold. Subsequent to this transaction, the value of the shares of Pocket Books, Inc. deteriorated significantly and the value of Eastman Kodak gradually increased.

There is no factual dispute between the complainant and the respective respondents that Pocket Books, Inc. was in fact recommended by the firm and the proceeds of the sale of Eastman Kodak would be utilized to pay for the purchase. We therefore limit our consideration to a determination of whether such recommendations were suitable for the respective customers.

We have carefully reviewed the record and find that the aforementioned recommendations were not unsuitable for the respective customers, considering their trading objectives, the nature of the securities contained in their individual accounts, and our general idea of their financial resources. We therefore conclude that there has been no violation of Sections 1 and 2 of Article III of the Rules of Fair Practice as against either respondent as it relates to this charge. It is clear that at the time of the recommendation, Pocket Books, Inc. was recommended by many reputable investment advisory services in the financial community. Periodically thereafter the security was recommended even as its price diminished. The firm's failure to advise Miss Rand of any price deterioration may be excused by the fact that the firm maintained its optimistic feeling about the company together with the reasonable assumption that Miss Rand had access to the markets in the stock without being notified regularly.

The benefit of hindsight now permits of the luxury to reflect on the judgment of the firm and Mr. Crimmins with regard to this particular recommendation. We are convinced that although the respondents were familiar generally with the nature of the account and the resources of the customer, we do not feel that the facts alleged in this complaint support a charge of unsuitability but at most a possible error in judgment. Pursuant to the expressed wishes of Miss Rand it appears that the firm did, in good faith, attempt to create long-term trading profits in her account as well as her mother's. The unfortunate result of these particular recommendations merely reaffirms the inherent risks in the securities business and does not indicate negligence on the part of the respondents in this case.

During the course of the hearing, Miss Rand charged that the individually-named respondent made certain flamboyant representations in the recommendation of Pocket Books, Inc. Mr. Crimmins vehemently denied any such recommendations and there is no other evidence contained in the record which would support these particular allegations. We therefore dismiss all charges of violation of Article III, Sections 1 and 2 relating to this particular segment of the complaint.

With regard to the charge of a violation of Article III, Section 1 in the firm's failure to allocate to Miss Rand's account 100 shares of Alberto-Culver Co., we find that a mere indication of interest does not create a pre-emptive right in any customer to the number of shares requested in such indication. Participants often times do not receive allotments to cover their indications of interest and adjustments must be made and there must be some allowance for freedom in this area. We find nothing in the record to establish any pre-emptive right on the part of Miss Rand or any wrongdoing on the part

Shields & Company

Page 4

of the firm in its failure to make stock available to this particular customer
and we dismiss all charges with regard to this area of complaint as well.

DISTRICT BUSINESS CONDUCT COMMITTEE
FOR DISTRICT NO. 12

By:

H.R. Henderson
For the Committee

AMERICAN STOCK EXCHANGE

ELEVEN WALL STREET

DEPARTMENT OF MEMBER FIRMS

NEW YORK, N.Y.

FRANK J. COYLE
PRESIDENT
SHIELDS & CO.
14 WALL STREET
NEW YORK 5, NEW YORK

January 6, 1964

1 Frank J. Crimmins
Shields & Co.
14 Wall Street
New York 5, New York

Dear Mr. Crimmins:

This is to advise you of the Exchange's findings and decision with respect to your conduct as described in the Staff Memorandum dated October 3, 1963.

Pursuant to the provisions of Rule 345, the Exchange has found you guilty of conduct contrary to an established practice of the Exchange in that you failed to conform to the principles of Rule 410 in not placing account designations on order tickets prior to the execution of the order. Because the violations were technical in nature and not material, it was determined that no disciplinary action be taken against you. However, you are cautioned that any future evidence of your failure to adhere strictly to Exchange rules and regulations may result in disciplinary action being taken against you.

You are not found guilty of the other charge alleged that you made misstatements to the Exchange as set forth in the aforesaid Staff Memorandum.

Very truly yours,

John J. Kilkenny

cc: Mr. Warner G. Cosgrove, Jr.
Shields & Co.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-X

FRANK J. CRIMMINS,

: 72 Civ. 290

Plaintiff,

AFFIDAVIT

-against-

AMERICAN STOCK EX-
CHANGE, INC.,

Defendant.

-X

STATE OF NEW YORK) ss.:
COUNTY OF NEW YORK)

BURTON L. KNAPP, being duly sworn, deposes and says:

1. I served as special independent counsel to defendant American Stock Exchange (the "Exchange") in the presentation to an Exchange Disciplinary Panel (the "Panel") of Charges against plaintiff arising out of his activities as a broker and his personal dealings in the common stock of Four Seasons Nursing Centers of America, Inc. ("FSN") while he was an Allied Member of the Exchange, a Vice-President and voting stockholder of Walston & Co., Inc. ("Walston") and manager of one of his firm's branch offices. I am familiar with the facts upon which the Charges were based and the procedures followed by the Exchange at all stages of the matter. I submit this affidavit in opposition to plaintiff's

application for preliminary injunctive relief, dated September 7, 1973, made at the conclusion of the disciplinary proceedings.

2. On July 3, 1973, Judge Lasker denied an application made by plaintiff just prior to the commencement of the hearing to enjoin the proceedings. Thereafter, three all-day sessions were conducted before the Panel on July 9, 18 and 25, 1973 at which a 596-page stenographic transcript was taken. After submission of written memoranda by the parties, the Panel rendered its written determination dated August 27, 1973, finding plaintiff guilty of two Charges of conduct inconsistent with just and equitable principles of trade, and one specification of a third Charge based upon his misstatement on a material point of the Exchange during its investigation concerning his personal indebtedness to certain management officials of FSN. Because of the serious nature of the violations proved, the Panel barred plaintiff for nine months from employment with any member or member organization of the Exchange, and further directed that plaintiff not be employed in a managerial or supervisory capacity for fifteen months thereafter.

3. In the face of the serious evidence of misconduct disclosed by the record, if the Panel's determination of guilt or the penalty is now to be vitiated on the spurious grounds contrived by plaintiff in his moving papers, it is entirely doubtful whether any stock exchange ever could discharge its statutory

obligations to the investing public by disciplining a broker for conduct inconsistent with just and equitable principles of trade. This affidavit, therefore, will be confined to the facts in order to correct the many liberties taken by plaintiff with the record before the Panel in the latest of his numerous unsuccessful attempts since late 1971 to prevent or delay a badly-needed final determination on the merits of the Charges, this time in the form of an application for an injunction, pendente lite, enjoining the Exchange (i) from imposing any penalty upon plaintiff; and (ii) for a further order vacating the Panel's determination of guilt. For reasons set forth herein and in the Exchange's accompanying Memorandum of Law, a grant of the drastic relief now sought by plaintiff would afford him the same, if not a greater measure of, relief as he could gain after a full trial on the merits under circumstances where he has not begun to meet the threshold requirement of demonstrating factually a probability of success on the merits of his underlying action.⁽¹⁾

(1) In Crimmins v. American Stock Exchange, Inc., 346 F.Supp. 1256 (S.D.N.Y. 1972), the first of plaintiff's attempts to enlist the aid of this Court in revamping the Exchange's disciplinary procedures to his liking, Judge MacMahon held that the Exchange's rules were "thoroughly fair" even though the "no counsel" rule (subsequently amended) was then in effect; that the Charges and Report of Investigation were specifically detailed and gave him adequate notice of his violations of "Exchange rules, procedures and standards of ethical business behavior with which [he] was required to be familiar as a condition for approval of his position at Weston with which he pledged himself to comply."

4. To simplify the task imposed upon the Court by plaintiff's motion and to focus on the conclusive evidence before the Panel of plaintiff's guilt of the Charges, there is annexed hereto as Exhibit "A" the Post-Hearing Memorandum dated August 17, 1973, submitted by the Exchange to the Panel at the conclusion of the hearings on the Charges. We respectfully invite the Court's attention to pages 5 to 20 thereof for a concise summary of this case, including Appendix II to the Memorandum, a chronological summary of plaintiff's activities comprising the pattern of circumstances and course of conduct upon which the Charges and finding of guilt were predicated. As indicated by the summary of facts set forth in the ensuing paragraphs of this affidavit and the Exchange's Post-Hearing Memorandum, the evidence before the Panel supporting its finding of guilt and the penalty came almost entirely from plaintiff's own lips in his hearing testimony and in his two interviews by the Exchange in the course of its investigation of plaintiff's activities [ASE Exhibits 10(a) and 10(b) and accompanying exhibits introduced at the interviews].*

*References in the form "ASE Exhibit - " are to the exhibits introduced by the Exchange at the hearing before the Panel.

I - The Exchange's Investigation of FSN and Plaintiff

A. The FSN Manipulation

5. FSN was organized in 1967 by three Oklahoma City businessmen, Jack L. Clark, Amos L. Bouse, Jr. and Thomas Gray, as its principal shareholders, for the purpose of engaging in the construction and operation of nursing home facilities. Montgomery Company, a partnership comprised of certain officers, including plaintiff, of Walston & Co., Inc. ("Walston"), an Exchange member firm having branch offices throughout the United States and employing approximately 1,300 registered representatives, was instrumental in supplying initial equity capital to FSN in exchange for a substantial minority stock interest in the fledgling company. Walston thereafter became FSN's principal underwriter, investment banker and financial advisor and the firm placed one of its officers, Gordon H. McCollum, on FSN's board of directors [Report of Investigation, Appendix C to the Hill Affidavit, p. 3].

6. Plaintiff, who described himself as the third largest producer of brokerage business at Walston [R-349], was, during the period covered by the Charges, an Allied Member of the Exchange, a Vice-President and a 1% voting stockholder of Walston, and manager of the firm's branch office at 1190 Avenue of the Americas in New York City where he supervised some 16 brokers. Plaintiff entered the securities business in 1956, having previously been

employed by several securities firms in sales capacities, and his experience includes employment as a branch office manager of another exchange member firm. [Exhibit "A", p. 5].

7. In May 1968, Walston managed an initial public offering of FSN stock at \$11 per share. By November of that year the stock had risen sharply in price to \$58 per share, at which time FSN was admitted to trading on the Exchange. Following a 2-for-1 split in January 1969, FSN stock attained an all-time high of \$90.75 per share by October of that year, an increase in price of over 1500% (giving effect to the split) since FSN's debut as a public company 18 months earlier [Report of Investigation, pp. 1, 2].

8. From information later developed by the Exchange and other agencies in the course of an investigation of FSN, it appeared that Clark, Bouse and Gray and their associates had engaged in a scheme to manipulate the market in FSN stock. Shortly after the facts came to light in April 1970, trading in FSN was suspended, and the company was thrown into bankruptcy with great loss to public investors. Later, in a 65-count indictment handed down in December 1972, a federal grand jury in New York charged Clark, Bouse, Gray, certain other FSN officials and two officers of Walston, with mail fraud and violations of the federal securities laws through, among other means, their use of the Exchange marketplace in the furtherance of the manipulative scheme. Subsequently, Clark,

FSN's principal executive officer, pleaded guilty as did two Walston officers, Messrs. Glenn R. Miller and Gordon H. McCollum. Plaintiff was named as a co-conspirator (but not a defendant) in the indictment [Exhibit "A", pp. 5-7].

B. Interviews of Plaintiff by the Exchange

9. Prior to the suspension of trading in FSN stock in April 1970, the Exchange noted an unusually heavy concentration of activity in FSN stock emanating from Walston and the branch office managed by plaintiff, and it initiated an investigation. In accordance with the Exchange's regular procedures it called plaintiff in for an interview on November 25, 1969. Plaintiff was apprised of his rights at the time, and he was accompanied by counsel. Plaintiff's initial Exchange interview and a second interview on January 29, 1970 disclosed, among other things, that plaintiff had established in mid-1968 and thereafter maintained close social and business relationships with Jack L. Clark and his associates; that plaintiff had opened and serviced brokerage accounts at Walston for Clark and a number of other persons associated with FSN; and that plaintiff had engaged in extensive and concerted efforts to promote investor interest in FSN stock. Finally, and although the Exchange had difficulty at plaintiff's interview (as did the Panel at the hearing on the Charges) in eliciting all of the facts from plaintiff, it was ascertained that beginning just before

FSN stock was listed on the Exchange in November 1968, plaintiff arranged to acquire on unusually liberal credit terms from Messrs. Clark, Bouse and Gray, FSN's three principal officers, 30,000 (post-split) unregistered FSN shares at a purchase price considerably below the market price of FSN stock when the transaction was consummated [Exhibit "A", pp. 13-20].

II - The Hearing Before the Panel

A. Plaintiff's Undisclosed Acquisition of 30,000 Unregistered FSN Shares

10. Clearly, the 30,000 share transaction standing by itself independently of the plaintiff's other dealings with FSN and its officers, and his extensive activities on their behalf, was sufficient from a factual standpoint to support the Panel's finding of guilt on Charge 3 involving alleged violations by plaintiff of the credit regulations of the Federal Reserve Board (Regulation T covering the arranging of credit on stock purchases). In this connection, there was ample evidence in the record that contemporaneous sales of unregistered stock were then being made to institutional investors for almost three times the price per share which plaintiff arranged to pay to the FSN insiders. A complete statement of all of the facts and circumstances surrounding plaintiff's acquisition of the 30,000 unregistered FSN shares, including his concealment of the transaction from his firm and its customers, and the efforts he made to prevent the Exchange from

ascertaining all of the facts is contained in Exhibit "A" annexed hereto, pp. 13-19, 36-38. In reviewing these matters, it again should be noted that plaintiff's own testimony furnished the factual basis for the Panel's findings.

11. With respect to the Panel's finding that plaintiff was guilty of conduct inconsistent with just and equitable principles of trade as alleged in Charge 1, the Panel's determination makes clear that although the undisclosed 30,000 share transaction standing by itself raised serious questions of ethical business behavior, that incident was carefully considered by the Panel in the context of the totality of the activities constituting plaintiff's course of conduct upon which the Charges and Report of Investigation were based. The undisputed facts indicated that despite plaintiff's primary obligation to supervise his branch office, his activities ranged far and wide into investment banking areas through which he placed himself in a position to know in advance of significant corporate developments of a non-public nature taking place in the affairs of FSN. [See Appendix II to Exhibit "A".]

B. Plaintiff's Extensive Participation
in FSN's Corporate Affairs.

12. Certain of the more significant of plaintiff's contact

with FSN and its officers are summarized at pages 20 to 30 of Exhibit "A" annexed hereto. As indicated at pages 22 to 29 thereof, there was substantial evidence before the Panel that as the result of his travels about the country with Jack L. Clark and meetings he attended with Clark (many of which were arranged by plaintiff for the purpose of interesting institutional investors in FSN), plaintiff came into the possession of information in advance of a public announcement made on April 7, 1969, concerning FSN's plans to organize a subsidiary for the franchising of nursing centers with financing provided by a group of institutions. FSN stock rose sharply in price following the April 7, 1969 announcement.

13. Although plaintiff denied before the Panel his access to, possession or use of inside information concerning the FSN franchising program, there was indisputable documentary evidence before the Panel (ASE Exhibit 27) that on April 1 and 3, 1969, immediately prior to the public announcement of FSN's franchising program, plaintiff effected substantial purchases of FSN stock for accounts maintained by him at Walston for two individuals closely associated with FSN, James P. Linn and Julian T. Helm, who later became officers of FSN's franchising subsidiary; and that shortly after the announcement plaintiff effected profitable sales of FSN shares for these two accounts [Exhibit "A", pp. 26-29].

14. In considering the totality of plaintiff's activities forming the basis of Charge 1, the Panel was thoroughly justified in attaching significance to the Linn and Helm transactions effected on the event of an important FSN announcement, particularly in view of evidence that plaintiff attended at least one meeting as early as February 1969, at which the FSN franchise program was discussed and that plaintiff participated extensively in the market in FSN stock shortly

(2)

thereafter. Finally, when he was afforded a full opportunity before the Panel to offer an explanation of these transactions, and his assistance rendered to two individuals closely connected with FSN in capitalizing on the forthcoming franchise announcement, plaintiff attempted to mislead the Panel into believing that certain of the trades in FSN stock occurred after the announcement by claiming that settlement dates reflected on monthly account transcript (Exhibit 27) were trade dates. [See Exhibit "A", p. 28 and R-470.] Clearly, the Panel was entitled to take into account plaintiff's lack of candor in explaining this transaction, as well as the plaintiff's attempt, during his Exchange interview, to conceal the facts concerning his arrangements with FSN's insiders in connection with the acquisition of 30,000 FSN shares.

(3)

(2) According to plaintiff's own summary submitted to the Panel, he purchased 104,890 shares and sold 44,367 FSN shares for customers in a span of nine weeks between early February and the week preceding the franchise announcement. In February alone, he participated in one out of every four transactions in FSN stock on the Exchange (Crimmins Answer to Charges - ASE Exhibit 3).

(3) See Exhibit "A", pp. 36-38 for a summary of the facts upon which the Panel found plaintiff guilty of Charge 2(i), a misstatement concerning the extent of his indebtedness to FSN's principal officers on the 30,000 share transaction.

III - Plaintiff was Given a Fair and Impartial Hearing Upon Adequate Notice of His Course of Conduct Upon Which the Charges Were Based

15. Insofar as can be deduced from plaintiff's blunderbuss attacks on the Exchange and its disciplinary rules, plaintiff's case would appear to rest primarily on bald conclusions not supported by any facts in his own moving affidavit (p. 2) and in that of his counsel, Thomas W. Hill, Jr. (p. 3), that the Charges and the Report of Investigation assertedly failed to give plaintiff reasonable notice of what he was charged with in Charge 1; or that new matters of which plaintiff had no prior notice were sprung on him at the hearing. The result, according to plaintiff, is that he was unable to properly defend himself because the Exchange did not custom-tailor its rules to plaintiff's specifications with all of the trappings of a judicial trial, including, among other things, interrogatories and subpoenas of witnesses outside of the Exchange's jurisdiction or authority. None of plaintiff's objections bear scrutiny.

16. Apart from the fact that Congress never intended in the Securities Exchange Act of 1934 to convert the nation's stock exchanges into courthouses when they conduct disciplinary proceedings, the record herein shows that at every stage of the proceedings the Exchange adhered scrupulously to its own rules; and that it gave plaintiff full and fair notice that the Charges were

based upon the totality of his extensive activities on behalf of FSN and his contacts with its principal officers. Moreover, the hearing record makes abundantly clear that in the conduct of the hearing of the Panel, chaired by Thomas W. Rae, Jr., a Vice-President of E.F. Hutton & Co., Inc., and former Assistant Director of the Division of Trading and Exchanges of the Securities and Exchange Commission in charge of the Division's national enforcement program, afforded plaintiff every procedural safeguard to assure him of a thoroughly fair and impartial hearing on the merits of the Charges.*

17. Alternatively, plaintiff urges that the Panel's determination is not supported by the facts. The frivolousness of these arguments is demonstrated by the record which shows that the principal evidence before the Panel supporting its finding of guilt came from plaintiff's own lips in his hearing testimony and in his two interviews by the Exchange in the course of its investigation [ASE Exhibits 10(a) and 10(b)]; from facts admitted by plaintiff in his Answer to the Charges (ASE Exhibit 3); and indisputable matters of record.

* The names of the other four Panel members and their firm affiliations and fields of expertise in the securities business appear in Exhibit "B" annexed hereto.

18. Turning to plaintiff's specific objections set forth in his supporting memorandum, it is asserted (pp. 8-20) that the Exchange's Report of Investigation was so vague, ambiguous and replete with factual errors that it was not possible to understand the precise conduct alleged to be wrongful. Judge McMahon, in his opinion in Crimmins, rejected the very same argument over a year ago, recognizing that the Report of Investigation and Charges involved the totality of plaintiff's conduct in relation to the Exchange's rules, procedures and standards of "ethical business behavior". Moreover, the Panel did not accept the Report of Investigation in evidence, deeming it instead as a document in the nature of a pleading [R-252]. To leave no doubt as to the evidence relied upon by the Exchange in support of the Charges, the undersigned undertook to prepare and furnish to plaintiff's counsel and the Panel an event-by-event summary of all matters in the Report of Investigation relating to plaintiff's activities [R-113; Exhibit 37; see also Appendix II to Exhibit "A" annexed hereto]. As to minor statistical discrepancies concerning plaintiff's total customer transactions in FSN stock during the relevant period, a stipulation was entered on the

record in which the Exchange accepted plaintiff's summary
(3)
[R-93-98].

19. The argument developed by plaintiff in his memorandum (pp. 11 to 14) that at the hearing the Panel considered prejudicial allegations or matters that were not within the Charges is unsupportable.

(a) The Exchange never alleged at the hearing that plaintiff breached the "free-riding" rules of the N.A.S.D. This matter was brought out during plaintiff's testimony in the context of plaintiff's relationships with Albert Santangelo, the Exchange specialist in FSN stock [R-427], as an incident of plaintiff's total course of conduct. It is utterly fanciful for plaintiff to suggest that this evidence had any effect on the hearing outcome.

(b) Plaintiff himself raised before the Panel the question of his non-disclosure to his firm and its customers of his private acquisition of 30,000 FSN shares from FSN's principal officers. A witness called by plaintiff, Mr. A. H. Rauschman, a former compliance officer of Walston, testified as to the existence of a Walston firm policy requiring disclosure of plaintiff's interest in FSN stock to the firm's customers.

(3) Mr. Crimmins concededly accounted for a total of 394,010 FSN shares traded on the Exchange, consisting of 271,023 purchases and 122,087 sales, or over 12% of his firm's total activity. Certain of these transactions were for Mr. Crimmins' own account and for the accounts of persons closely associated with FSN. (See Exhibit "A", p. 8, for a summary of commission income and other income derived by plaintiff from his FSN transactions.)

Mr. Rauschman further indicated that plaintiff did not inform him of his interest but that if he did he would have advised disclosure [R - 347-343]. For reasons made abundantly clear by the Exchange [see Exhibit "A", pp. 16-19], the very nature of this transaction demanded secrecy.

20. Plaintiff also urges that the Charges do not involve the "intrinsic propriety" of his acquisition of 30,000 FSN shares from FSN's management on liberal credit terms, nor raise any question concerning inside information, thereby implying that the Panel treated and based its determination on these matters as separate substantive charges. Apart from the fact that these matters are referred to in Charge 1, the record makes crystal clear [see R-241, 242; 246-278] that notwithstanding serious questions of the propriety of plaintiff's 30,000 share transaction and insider trading transaction at the time of FSN's franchise program announcement, the Panel properly regarded these matters as part of plaintiff's total course of dealings and relationships constituting the improper and unethical business conduct alleged in Charge 1.

21. Plaintiff's ill-founded objections concerning his requests addressed to the Panel to issue subpoenas of witnesses outside of the Exchange's jurisdiction, and to direct the Exchange to respond to "interrogatories", are dealt with fully in the Exchange's accompanying Memorandum of Law. It suffices to say the Exchange promptly complied with plaintiff's request made prior to the hearing that the Exchange notify several persons affiliated with Walston to appear as witnesses for plaintiff at the hearing.

None of these individuals was called by plaintiff. With respect to requests for subpoenas of persons not presently within the Exchange's jurisdiction, specifically two former staff members who did some of the investigative work in connection with the Report of Investigation, the Panel properly ruled that it lacked subpoena power. The plaintiff nevertheless issued and served subpoenas on these former Exchange employees, Messrs. Daniel Schatz and Bernard Zucker, under the purported authority of the New York CPLR, but again he never called either of them as a witness despite the fact that they both responded to the subpoenas and agreed to make themselves available as witnesses for plaintiff.

22. Plaintiff also has omitted to inform the Court that one month prior to the hearing, the undersigned extended an invitation to his counsel to inspect the documents to be offered in evidence by the Exchange, proposing further that an effort be made to pre-mark the exhibits to facilitate and expedite the hearing. Plaintiff's counsel's response was to seek a temporary restraining order on July 3, 1973. Later, the Panel Chairman directed Exchange counsel to make all of the Exchange exhibits available to plaintiff's counsel. Virtually all of the second session on July 18, 1973, was devoted to introducing exhibits. As the hearing record shows [R -146-302] the Panel gave plaintiff the benefit of every doubt by

excluding exhibits objected to by his counsel. No serious claim, therefore, can be made that plaintiff was unaware of the evidence to be relied upon by the Exchange in support of the Charges. To the contrary, the foregoing episodes disclose that plaintiff's professed need for pre-trial discovery was a mere pretext to provide a colorable basis for his present application.

23. Plaintiff finally urges that the penalty imposed by the Panel was "unconstitutionally harsh." The short answer is that the degree of seriousness of plaintiff's violations after a full hearing was a matter resting within the sound discretion of the Panel members, all of whom are experienced and well-regarded members of the securities industry. In assessing an appropriate penalty, the Panel fairly was entitled to take into account the extent to which plaintiff's conduct may have contributed to or resulted in damage to his customers and those of his firm following FSN's financial collapse, and whether plaintiff, either wittingly or unwittingly, by his failure to adhere to Exchange rules and standards of ethical business behavior, lent himself and his firm to the furtherance of a scheme by FSN's principals to manipulate the market in FSN stock. It was also proper for the Panel to take into consideration plaintiff's lack of candor in his hearing testimony and prior Exchange interview concerning the full extent of his relationships with FSN's management. Having elected to submit himself to a full hearing where

the evidence provided detailed proof of behavior on his part that was within the framework of the Charges but was even more serious than originally appeared, plaintiff should not be heard to complain that he might have received a lesser penalty, even if this be true, if he had entered into a settlement with the Exchange.

For the foregoing reasons, plaintiff's application for a preliminary injunction should be denied in all respects.

Burton L. Knapp

Sworn to before me this
20 day of September, 1973.

Burton L. Knapp

RECEIVED MOUNTAIN
NOTIFY PUB. C. State of NY
No. 31-1-37-00
Issued in New York County
Valid until October 20, 1973

EXHIBIT "B"

Disciplinary Panel - Charges Preferred Against Frank J. Crimmins

1. Thomas W. Rae, Jr. - Chairman, Vice President, E.F. Hutton & Co., Inc. since 1968; formerly Assistant Director Division of Trading and Exchanges of the Securities and Exchange Commission and head of the Division's National Enforcement Program.
2. Martin H. Berman - Resident Partner, New York City office of Edward & Hanley; 10 years experience in branch office administration and retail operations.
3. George H. Howard, Jr. - Senior Vice President and Director, Harris Upham & Co., Inc.; 20 years experience in the securities business, primarily in administration and branch office management.
4. Thomas Sour - Vice President and Registered Representative of Bear Stearns & Co., 15 years in the securities business with special experience in institutional and foreign operations.
5. Robert Hill - Senior Vice President and Registered Representative, Clark Dodge & Co., Inc.; and Chairman of Finance and Planning Committee; 27 years experience in all phases of the brokerage business.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - X

FRANK J. CRIMMINS,

Plaintiff,

-against-

72 Civ. 290

AMERICAN STOCK EXCHANGE, INC.,

MEMORANDUM

Defendant.

- - - - - X

APPEARANCES:

SPEAR AND HILL, ESQS.
One State Street Plaza
New York, New York 10004
Attorneys for Plaintiff
Of Counsel: DONALD STUART BAB, ESQ.

LORD, DAY & LORD, ESQS.
25 Broadway
New York, New York
Attorneys for Defendant
Of Counsel: JOHN J. LOFLIN, ESQ.

LASKER, D.J.

Plaintiff, a former registered representative of Walston & Co., Inc., ("Walston") seeks an order vacating a determination by a disciplinary panel of defendant American Stock Exchange ("Exchange") finding him guilty of several violations of Exchange rules, and suspending him for two years. An earlier motion before us resulted in a temporary restraining order preventing the disciplinary panel from announcing its determination until plaintiff's objections to the Exchange's actions were resolved.

Plaintiff moves for summary judgment, asserting that his hearing, the Exchange's conduct throughout the proceedings against him and the determination rendered by the Exchange panel violated the due process requirements of the Fifth Amendment in that (1) he received inadequate notice of the charges against him; (2) the Exchange improperly refused to issue subpoenas required by plaintiff to present exculpatory evidence; (3) the Exchange disciplinary panel applied an unconstitutionally vague standard and also applied the wrong standard in considering plaintiff's conduct; (4) the panel's determination is contrary to law and the evidence; (5) the Exchange's penalty constitutes a deprivation of

1.

property without due process of law and (6) the Exchange's conduct violates §6 of the Securities Exchange Act of 1934, 15 U.S.C. §78f, and §§1 and 2 of the Sherman Act, 15 U.S.C. §§1 and 2. Defendant countermoves for summary judgment.

I.

The charges brought against plaintiff arose out of his activities in connection with the common stock of Four Seasons Nursing Home Centers of America, Inc. ("FSN") and his relationships with certain officials of FSN.

The series of events giving rise to the charges began in 1967, when a partnership comprised of officers of Walston, including plaintiff, was organized to furnish initial equity capital ("seed money") to FSN in exchange for a substantial stock interest in the new company. Walston subsequently became FSN's principal underwriter, financial advisor and investment banker, managing the initial public offering of FSN stock at \$11 per share in May 1968.

At about the same time plaintiff developed business and social relationships with the three principal officers of FSN, and, just before FSN stock was listed on the Exchange in November, 1968, he arranged for the purchase from these officers of a substantial block of restricted, unregistered FSN common shares at a price

2.

considerably below the market price of FSN free shares when the purchase was consummated.

Plaintiff's activities in connection with FSN during the period from mid-1968 through the early part of 1970 also included efforts to interest institutional investors in FSN stock and the execution of a large volume of customer orders in FSN stock.

The price of FSN stock had risen steadily from the time of its initial public offering in May, 1968. By the time it was listed on the Exchange in November, 1968 it was selling at \$58. Following a 2-for-1 split in January, 1969, it climbed to an all-time high in October, 1969 of \$181.50 (\$90.75 after the split).

In the Fall of 1969, the Exchange noted an unusually heavy volume of transactions in FSN emanating from Walston, particularly the branch office managed by plaintiff, and began an investigation. The Exchange interviewed plaintiff in the presence of his counsel on November 25, 1969, and again on January 29, 1970. Plaintiff disclosed the nature of his business and social relationships with Jack Clark, a principal officer of FSN, his efforts to promote investor interest in FSN, and his purchase of a large block of unregistered FSN shares on favorable terms.

The Exchange suspended trading in FSN stock in April, 1970, and in March, 1971, issued a Report of Investigation ("Report") describing possible violations of Exchange rules by Walston and a number of individuals including plaintiff. In November, 1971, the Exchange formally charged plaintiff with four violations of Exchange rules. His hearing, before a disciplinary panel in July, 1973, resulted in a nine month suspension of employment and a two year suspension of supervisory duties.

II.

Plaintiff alleges that the formal charges against him were vague; that the Report, which the charges incorporated by reference, was confusing and factually inaccurate; and that the Exchange refused to respond to interrogatories which he propounded in order to clarify the charges against him.

The three formal charges against plaintiff, covering seven pages, allege conduct "inconsistent with just and equitable principles of trade" and "detrimental to the interest or welfare of the Exchange."

Charge I alleges that plaintiff took an active part in maintaining the "special relationship" between Walston and FSN involving "the activities of Walston as principal investment banker, financial advisor and under-

writer for FSN and its affiliates, the access which Walston and its officers had to inside information concerning the operations, policies and plans of FSN, and the substantial financial investment which the firm [and] its officers ... had in FSN and its affiliates."

Charge I also refers to plaintiff's "close personal or business relationship with the principal officers of FSN," his service of their brokerage accounts, his assistance in arranging financing for FSN, and states that plaintiff was in a position to obtain inside information concerning FSN. The charge further notes plaintiff's extensive and continuing effort to solicit and promote interest and market activity in the stock of FSN during practically the entire period the stock was traded on the Exchange," his "concerted activities to develop substantial institutional interest in FSN," and his purchase from FSN officers of a "substantial block of FSN stock ... under agreements providing for extended periods of payment and at unusually low interest rates." The charge alleges that "As a result of these purchase arrangements, [plaintiff] became and remained heavily indebted to the principal officers of FSN." Charge I concludes that plaintiff's course of conduct "tended to serve and enhance [plaintiff's] personal interest and the special

interests of his firm, and was in direct conflict with the duty of fair dealing which he owed to the customers of Walston, to the investing public and to the Exchange."

Charge II plainly asserts that plaintiff made a "misstatement about a material point concerning the extent of his indebtedness" to three officers of FSN; and that he engaged in off-board transactions in FSN stock with these officers, in violation of Exchange rules.

Charge III specifies that plaintiff violated §220.7(a) of Regulation T, promulgated pursuant to §7 of the Securities Exchange Act of 1934, in connection with his purchase from FSN officers of unregistered FSN stock, by obtaining credit terms more favorable than those permitted under Regulation T.

We believe these charges were more than sufficiently clear and detailed to permit an effective defense, and that they were framed with adequate specificity to set the framework of relevance necessary to govern the proceeding.

Douds v. International Longshoreman's Association, 241 F.2d 278, 283 (2d Cir. 1957).

Plaintiff contends, however, that since the charges incorporated by reference the "pattern of circumstances" detailed in the Report, he was hindered in understanding the allegations against him and in the preparation of his defense. His confusion is claimed to result from

certain factual inaccuracies in the Report, as well as certain alleged inconsistencies between the charges and the Report.

The factual inaccuracies, which are conceded by the Exchange, relate to figures reflecting trading activity in FSN; but this problem is remedied by the fact that plaintiff's figures were accepted by stipulation at the hearing. In any event, the figures were not material to the charges.

Nor is there merit to the contention that there are confusing inconsistencies between the Report and the charges. Plaintiff claims that the Report is so vague in its references to him that it is not possible to understand the precise conduct alleged to be wrongful, which acts are attributed to plaintiff, and how much of the information in the Report is to be considered "background" and how much is actually part of any given charge.

We believe these "inconsistencies" were certainly not prejudicial to plaintiff, and indeed he offers no support for his conclusory statement that they were. Plaintiff knew as early as November, 1969, when the Exchange first interviewed him, that his activities were merely part of a general investigation of the relationship between Walston and FSN. The Report summarized the entire investigation, but it did not purport to charge plaintiff.

The formal charges performed this function, and by themselves gave plaintiff full notice of the claims against him. Furthermore, a comparison of the Report with the charges makes clear that there are no material inconsistencies. Indeed the Report clearly discusses the conduct of plaintiff which was the basis for each of the charges brought against him. Thus, the fact that the Report was incorporated into the charges in order to supply more detail to the charging instrument did not in fact result in less notice than the charges alone supplied.

The Exchange's failure to respond to interrogatories propounded by plaintiff was proper in these circumstances, since there is no constitutional right to demand answers to interrogatories in hearings such as this.

Villani v. New York Stock Exchange, 72 Civ. 1765 (S.D.N.Y. March 15, 1973), N.L.R.B. v. Interboro Contractors, Inc., 432 F.2d 854 (2d Cir. 1970) cert. denied, 402 U.S. 915 (1971).

-- Plaintiff argues further that even assuming the charges were clearly set forth in the first instance, he was asked questions at the hearing relating to certain extraneous matters not specified in the charges and that the resulting prejudice infected the entire hearing. The matters claimed to be extraneous are plaintiff's sale to the Exchange FSN Specialist of plaintiff's allocation of

newly issued shares of Four Seasons Equity Corp., an affiliated company of FSN (Transcript 427-30); plaintiff's failure to disclose to Walston and his customers his personal purchases of FSN stock from three FSN officers (Transcript 384-88; 517, 528-9); and his placement of 6,400 shares of letter stock in a certain corporation with two of the FSN officers who had sold him his restricted FSN shares. (Transcript 422-3.)

Plaintiff was not prejudiced by the mention of these matters and, indeed, they are relevant to the charges. Plaintiff was clearly put on notice, by the very wording of the charges, that the alleged improprieties related to his entire course of dealing in FSN stock, and with FSN officers, and the resulting conflict of interest as to his public customers. The matters claimed to be extraneous certainly are relevant to that course of dealing.

III.

Plaintiff claims he was prejudiced by his being questioned at the hearing why the FSN officers singled him out for the chance to purchase restricted FSN stock on unusually good credit terms. Though we agree with plaintiff that this question required a knowledge of the sellers' motives, we find unpersuasive plaintiff's contention that the Exchange's refusal to subpoena the sellers denied him access to "exculpatory" evidence. We do not believe that evidence of the sellers' motives, whatever they were, would have exonerated plaintiff since the issue in question

appears to us to have been the nature of plaintiff's actions and motives.

In any event, plaintiff offers no support for the proposition that the Exchange was required to issue subpoenas in the circumstances present here. Though the language of N.Y.C.P.L.R. §2302(a) seems to empower administrative panels such as the Exchange disciplinary panel to issue subpoenas without a court order, the very same provision extends a like power to all attorneys of record in administrative hearings. Plaintiff offers no reason, and we see none why the Exchange was required to issue subpoenas when plaintiff himself was possessed with the requisite power.

IV.

Plaintiff next contends that the Exchange rule barring conduct in breach of "just and equitable principles of trade" is unconstitutionally vague because the Exchange has never adopted rules specifying the prohibited acts. The contention is without merit. As an experienced registered representative, plaintiff may be fairly charged with knowledge of the ethical standards of his profession, especially where the conduct proscribed involves so central a principle as the avoidance of clear conflicts of interest. We find that, as applied to plaintiff, the Exchange's standard is not impermissibly vague, and that he lacks standing to attack

the Exchange standard on the ground that it might be unconstitutional as applied to others. United States v. Raines, 362 U.S. 17, 21 (1960).

Plaintiff's assertion that the Exchange applied to his conduct the more stringent "Allied Member" standard although he was charged under the "employee" ethical standards of Exchange Rule 345 must also fail. He offers no support for his assertion that the former standard is "stricter" than the latter and we find the language of the two standards to be virtually identical.

V.

Plaintiff claims that the panel's determination was contrary to law insofar as it rested upon his duty to disclose his arrangements with FSN officers for the purchase of FSN stock, and his alleged violation of Regulation T, governing the extension of credit in stock transactions. This contention is without merit. Plaintiff was tried for unethical, rather than illegal, conduct so that the panel was not obligated to find a violation of law in order to hold plaintiff guilty.

Plaintiff further contends that his course of conduct relating to the purchase from FSN officers of 30,000 restricted FSN common shares is not comprehended by Regulation T so that, as a matter of law, he could not have violated §220.7(a) of the Regulation. He also

argues that even assuming the applicability of the Regulation, the evidence was insufficient to support the panel's determination on this issue.

The relevant portion of Regulation T reads:

"A creditor may arrange for the extension or maintenance of credit to or for any customer of such creditor by any person upon the same terms and conditions as those upon which the creditor, under the provisions of this part, may himself extend or maintain such credit to such customer, but only upon such terms and conditions."

The significant details of the transactions in question follow: In November, 1968, plaintiff and FSN's three principal officers verbally agreed that plaintiff would purchase from them 10,000 shares of unregistered, restricted FSN common stock. In December, 1968, the parties executed a purchase agreement stipulating a price of \$35 per share. The transaction was not executed through a brokerage account. Plaintiff made no payment at that time for the shares he received, since the agreement provided that he would make an initial payment of \$175,000 (out of a total price of \$350,000) by January 15, 1969, with the balance to be paid six months later. On January 8, 1969, FSN common stock split two-for-one, so that plaintiff held 20,000 post-split shares.

In early March, 1969, the parties agreed to a

second private purchase of 10,000 (post-split) restricted FSN shares at \$30 per share. On March 15, 1969, plaintiff paid \$175,000 on account of the first purchase of FSN shares and \$55,000 as a down payment for the second. On April 7, 1969, plaintiff executed a note for \$245,000 to the three FSN officers representing the balance due on the second purchase. Nothing appears in the record as to subsequent payments.

Plaintiff asserts first that he was not a "creditor" as that term is defined by the Regulation. §220.2(a) of Regulation T defines a "creditor" as "any broker or dealer including every member of a national securities exchange." §220.2(a) refers to §3 of the Exchange Act for the definition of a "broker". 15 U.S.C. 78c(a)(4) defines the term "broker" as "any person engaged in the business of effecting transactions in securities for the account of others...."

Plaintiff argues, however, that the definition does not apply to him because the Act also includes a separate reference to a "person associated with a broker or dealer" (§78c(a)(18), emphasis added), which includes partners and branch managers and that plaintiff cannot be considered a "broker" within the meaning of Regulation T since he was a branch manager of Walston. We have found no authority, nor is any cited by plaintiff, for such a

restrictive application of the term "broker". There is no question that plaintiff was "engaged in the business of effecting securities transactions for others", or that he was a "broker" as that term is commonly understood and as the facial language of the Act, cited above, defines the term.

Plaintiff answers that, assuming arguendo he is a broker, he was not a "creditor" in the FSN transaction. However, §220.7(a) makes clear that the term "creditor" includes one who arranges for the extension of credit by a third party. There was substantial evidence before the panel that plaintiff himself requested the credit terms of his stock purchases from FSN officers. (Hearing Transcript 308-9, 402-6; Post-Hearing Memorandum of Amex, Inc., pp.37-9, quoting testimony of plaintiff at Exchange interview, January 29, 1970) We find that in the circumstances, plaintiff arranged for the extension of credit within the meaning of §220.7(a).

-- Nor can there be doubt that plaintiff was a "customer" under Regulation T, which defines the term at §220.2(c) as:

"... any person ... (i) to or from whom a creditor is extending, arranging, or maintaining any credit, or (ii) who, in accordance with the ordinary usage of the trade, would be considered a customer of the creditor and (2) includes, but is not limited to

(i) in case the creditor is a firm, any partner in the firm who would be considered a customer of the firm if he were not a partner, and (ii) any joint venture in which a creditor participates and which would be considered a customer if the creditor were not a participant."

Plaintiff next contends that Regulation T does not encompass transactions in unregistered or restricted stock. The wording of §7(a) of the Act, 15 U.S.C. §78g(a) which on its face applies to all securities except "exempted" securities, does not support this contention:

"(a) For the purpose of preventing the excessive use of credit for the purchase or carrying of securities, the Board of Governors of the Federal Reserve System shall ... prescribe rules and regulations with respect to the amount of credit that may be initially extended and subsequently maintained on any security (other than an exempted security)." (emphasis added)

An "exempted security" is defined in §3(a)(12) of the Act, 15 U.S.C. §78c(a)(12) to include federal, state and municipal securities and certain others not relevant here. We find nothing in the statute or regulation to suggest that unregistered or restricted securities are exempt under the section, and plaintiff has not called our attention to any authority which suggests that they are.

Having concluded that one holding plaintiff's position as branch manager in a member firm can be a "broker", a "creditor", and a "customer" as these terms are used in

Regulation T, and that the regulation applies to transactions in restricted securities, the special question presented by the unusual circumstances of this case is whether Regulation T is applicable to a "broker", as that term is commonly used, who arranges for the extension of credit (as "creditor") to himself (as "customer") in a personal transaction effected off the market and not through a brokerage account.

However solipsistic an arrangement this may appear, we believe that it does indeed violate §7(c) and Regulation T. A contrary holding would mean that plaintiff could execute for himself a transaction which the plain language of §220.7(a) prevents him from effecting for anyone else. Plaintiff argues, however, that although he is a broker by trade, in the transaction at issue he was acting purely as a layman, and since (as he claims) Regulation T does not apply to laymen, his purchase of FSN stock was legal. Plaintiff's syllogism is appealing in its simplicity but, in view of the entire tenor of the securities laws, we find it totally unpersuasive.

Nothing in §7 of the Exchange Act, 15 U.S.C. §73g, or Regulation T suggests or supports the narrow construction which plaintiff advances. It is axiomatic that the Securities Act is not to be narrowly or technically construed, Tcherepnin v. Knight, 389 U.S. 332 (1967);

SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180
(1963); Blau v. Rayette-Faberge, Inc., 389 F.2d 469 (2d Cir. 1968).

Although Regulation T does not explicitly describe the precise circumstances presented here, §7(c) of the Exchange Act uses exceptionally broad language in proscribing conduct designed to circumvent Federal Reserve regulations regarding the extension of credit in securities transactions:

- (c) It shall be unlawful for any ... broker or dealer, directly or indirectly, to extend credit or arrange for the extension or maintenance of credit to or for any customer
 - (1) on any security (other than an exempted security), in contravention of the rules and regulations which the Board of Governors of the Federal Reserve System shall prescribe...
 - (2) without collateral or on any collateral other than securities, except in accordance with such rules and regulations as [the Federal Reserve Board] shall prescribe...
- (B) to permit the extension or maintenance of credit in cases where the extension of credit is not for the purpose of purchasing or carrying securities or of evading or circumventing the provisions of paragraph (1) of this subsection.
- (d) It shall be unlawful for any person not subject to subsection (c) of this section to extend or maintain credit or to arrange for the extension or maintenance of credit for the purpose of purchasing or carrying any security, in contravention of [Regulation T]... for the purpose of purchasing or carrying

of or trading in securities in circumvention of the other provisions of this section."

The Securities and Exchange Commission has held that the personal stock transactions of broker-dealers are subject to Regulation T and that one individual can occupy the dual role of customer and registered representative in the same transaction. In In re Sutro Bros. & Co., 41 SEC 443, 451 (1963), the Commission found that where a salesman effected a transaction in his own account with his employer, he was for Regulation T purposes a "customer" who had arranged for the extension of credit to himself. Though Sutro reserved decision on the question whether a salesman would be liable if he obtained credit from a third party, rather than his employer, an early interpretation of Regulation T, (1938 Fed. Reserve Bulletin 763) held that a partner of a brokerage firm may under certain circumstances function as both creditor and customer. An opinion letter of April 24, 1972 of the Federal Reserve Board, indicates, on facts similar to those presented here, that one in a position of considerable responsibility at a brokerage firm may also be considered to occupy the roles of creditor and customer. (Exhibit G, annexed to affidavit of Thomas W. Hill, Jr., September 7, 1973) We believe that the positions of the regulatory agencies best acquainted with the regulation of credit

in securities transactions are entitled to considerable weight, and we adhere to their evident policy of holding brokerage professionals to the same stringent standards as laymen.

The holding here is consistent with the sole and unquestionable purposes of Regulation T: to protect the market and the public by curbing speculation in the securities markets and the economically destructive fluctuations which excessive credit precipitates; and to protect the small investor, who, mesmerized by all the "action", might join it with outstretched hand, receiving for his eagerness only a margin call. See Pearlstein v. Scudder & German, 429 F.2d 1136 (2d Cir. 1968); Moscarelli v. Stamm, 288 F. Supp. 453, (E.D.N.Y. 1968); Collateral Lenders v. Board of Governors of Federal Reserve System, 281 F. Supp. 899, 905-6 (S.D.N.Y. 1968); Zatz v. Hertz, Neumark & Warner, 262 F. Supp. 928, 930-31 (S.D.N.Y. 1966); Remar v. Clayton Securities Corp., 81 F. Supp. 1014 (D. Mass. 1949). Indeed it is entirely possible that plaintiff's own close association with FSN officers, coupled with his heavy commitment to pay for a large quantity of FSN restricted stock obtained on credit in violation of Regulation T, may itself have contributed to the speculative activity in FSN common stock to the detriment of many small investors, and thus promoted just the sort of

market atmosphere the credit regulations seek to prevent. We find no reason to construe either the Act or Regulation to permit such transactions, and decline to narrow the Act as suggested.

VI

Plaintiff's next assertion, that the panel's determination is contrary to fact, rests solely on his quarrel with the finding set forth in the determination of extensive trading activity in FSN stock for plaintiff's customers prior to public announcement by FSN on April 7, 1969, of a new franchising program. The contention is without merit. Plaintiff does not dispute that during the two weeks prior to the franchise announcement his customers purchased 6,500 FSN shares, 5,000 of them by FSN "insiders". This fact could properly be taken into account by the panel in finding that plaintiff failed to avoid an actual or potential conflict of interest regarding his public customers. Since we find, after reading the hearing record, that the determination was supported by substantial evidence, we may not interfere with it. Consolo v. Federal Maritime Commission, 383 U.S. 607 (1966).

Nor do we find plaintiff's suspension of nine months from employment by a member firm and fifteen months thereafter from employment in a supervisory capacity to be excessively severe, and thus to violate due process.

The penalty was determined by a panel of plaintiff's professional colleagues, better situated than this court to assess a fair penalty. In the absence of a showing that the panel exceeded its discretion or even a showing that the Exchange has imposed less harsh penalties in other comparable situations, we are not permitted to substitute our own findings. Consolo v. Federal Maritime Commission, supra.

VII.

Plaintiff claims finally that the Exchange's procedures run afoul of Silver v. New York Stock Exchange, 373 U.S. 341 (1963) and that plaintiff's suspension by the Exchange constitutes a refusal to deal in violation of §§1 and 2 of the Sherman Act.

Neither assertion has merit. Silver held that the limited anti-trust immunity afforded the Exchanges did not exempt them from the requirements of due process in disciplining members. Since we have already found that the proceedings against plaintiff complied with due process requirements, we also find the Exchange did not exceed its self-regulatory authority. The Sherman Act claim must also fail because of our finding that the Exchange's "refusal to deal" with plaintiff was justified by its determination that plaintiff violated Exchange rules.

VIII

In considering the issues before us in such detail we do not wish to encourage court review of intra-professional disciplinary proceedings.

For several important reasons, we strongly disapprove of resort to the courts in such matters except, perhaps, in cases of clearly arbitrary or unjust professional determinations, neither of which is presented by the proceeding at hand.

First, intra-professional discipline is best left to the reasoned consideration of the responsible professional administrative tribunals themselves. A long history of determinations by such bodies as the Stock Exchanges or Bar Associations, for example, makes it reasonable to assume that professionals may be expected in the vast preponderance of cases, to judge their colleagues with the same sense of fairness, regard for standards of conduct, attention to ethics and attention to the facts as the courts.

Moreover, such suits as the one at hand require an inordinate expenditure of time and resources for the court and parties and, most important, deprive disciplinary proceedings of finality and blunt their effectiveness.

Even if a court were presented with a considerably more compelling factual record than the one before us,

we believe it would be required to grant summary judgment in favor of the defendant. We consider it the responsibility of an attorney to bring suits of this nature in the spirit of Rule 11, Federal Rules of Civil Procedure, only if he is convinced beyond professional doubt that his client has been denied the relevant elements of fairness embodied in the noble concept of due process.

Plaintiff's motion for sumary judgment is denied.
Defendant's motion for summary judgment is granted.

It is so ordered.

Dated: New York, New York
December 12th, 1973.

MORRIS E. LASKER

U.S.D.J.